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3 SUPERIOR COURT OF THE STATE OF CALIFORNIA
4 FOR THE COUNTY OF SAN DIEGO
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6 Coordination Proceeding) JCCP No. 4042
Special Title (Rule 1550(b)))
7)
In re TOBACCO CASES II)
8)
This document relates to:)
9 The People of the State of)
California, et al. v. Philip Morris,)
10 Incorporated, et al., Los Angeles)
Superior Court Case No. BC 194217;)
11)
The People of the State of)
12 California, et al. v. General Cigar)
Co., et al., San Francisco Superior)
13 Court Case No. 996780;)
)
14 The People of the State of)
California, et al. v. Brown &)
15 Williamson, et al., San Francisco)
Superior Court Case No. 996781; and)
16)
The People of the State of)
17 California, et al. v. Tobacco)
Exporters, et al., San Francisco)
18 Superior Court Case No. 301631.)
)
19
20 DEPOSITION OF
21 CAROL M. RUSSELL
22
23 March 23, 2000
24 REPORTED BY: TERRI NESTORE, CRR, RMR, CSR 5614 #05-90594
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12 ALSO PRESENT:
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11 BE IT REMEMBERED that, pursuant to Notice,
12 and on Thursday, March 23, 2000, commencing at 9:43 a.m.
13 thereof, at the State of California Department of Health
14 Services, Tobacco Control Section, 601 North 7th Street,
15 Sacramento, California 94234-7320, before me, TERRI
16 NESTORE, RMR, CRR, a Certified Shorthand Reporter,
17 personally appeared

18 CAROL M. RUSSELL

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20 called as a witness by the defendants, who, having been
21 first duly sworn, was examined and testified as follows:

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1 EXAMINATION BY MR. L'ORANGE

2 MR. L'ORANGE: Q. Ma'am, could I have your
3 full name for the record, please.

4 A. Yes. Carol, C-A-R-O-L, middle initial M,
5 Russell, R-U-S-S-E-L-L.

6 Q. Now, have you had your deposition taken
7 before?

8 A. Have I -- any deposition?

9 Q. Yes, ma'am. Ever, at any time, anywhere.

10 A. Yes.

11 Q. How many times?

12 A. Once.

13 Q. Did you have an opportunity to speak with
14 your attorney about the proceeding that would take place
15 this morning?

16 A. Yes.

17 Q. Now as with each of the other witnesses who
18 have testified, because you've had only one previous
19 deposition and you've had a chance to talk with your
20 attorney, let me just review what's going to go on, to
21 make sure that you and I are on the same wavelength as
22 we go through this proceeding.

23 I'll ask you a series of questions.

24 I'm going to ask you to reply to my questions
25 out loud and in words. Please avoid, if you would, any
26 shakes of your head or replying "uh-huh" or "uh-uh."

27 It's very difficult for the court reporter to
28 take down those kind of responses. We are all

1 interested in an accurate record, so if you would, try
2 and avoid doing that.

3 I would also ask you to keep your voice up
4 and speak as you normally would in general conversation.

5 She can take down very quickly everything
6 that we say, so you don't need a measured cadence or
7 slowing down how you normally speak.

8 When the deposition is completed you'll have
9 an opportunity to review it. It will be in a little
10 booklet and you can make any changes to your testimony
11 that you want to. Now please understand that I or any
12 of the other attorneys who are present at the deposition
13 today can comment and argue about those changes to our
14 trial judge, and our trial judge can draw any inference
15 from the arguments that we make that he deems advisable
16 under the circumstance.

17 From time to time my questions today -- and
18 I'll warn you in advance -- are going to be poorly
19 phrased, poorly constructed, or it will look like I'm
20 groping in the dark, and I can assure you that's exactly
21 what's going on. So if you don't understand my
22 question, please stop me, ask me to rephrase it or tell
23 me what's wrong with it, and I'll try and give you a
24 better question.

25 I have no interest in getting into items that
26 you believe would be of a confidential or proprietary
27 nature. If you feel my questions are headed in that
28 direction, flash me a signal, let me know, we'll talk

1 about it and then figure out where we go.

2 I would ask, however, that in responses to
3 the questions posed to you, you avoid guess or
4 speculation. We can't use that on the record, that kind
5 of testimony is really of no value in this proceeding,
6 so if my question is pushing you towards guess or
7 speculation, again, tell me and we'll try and rephrase
8 the question. The law does permit us to get the best
9 estimate you have, and from time to time we may ask you
10 to make estimates of budget figures or periods that a
11 program ran -- something like that. What we're asking
12 for is your best recollection, but again, if you feel
13 we're propelling you into guess or speculation, tell us
14 and we'll try and rephrase the question.

15 This is your deposition. You are entitled to
16 take breaks at any time you want to, just let us know,
17 let your attorney know, and we'll do that.

18 Finally, this is a relatively informal
19 setting, a conference room in the Department of Health
20 Services, but the testimony you give here today carries
21 the same force and effect as if you were in San Diego
22 this morning sitting in a witness box offering
23 testimony, so the penalties of perjury that would be
24 normally applicable in a courtroom are equally
25 applicable in this type of setting.

26 Any questions about what I've covered so far?

27 A. No.

28 Q. Could you outline for me briefly your

1 educational background, please.

2 A. Well, I graduated from the College of
3 St. Catherine in 1958, B.S. degree in '64 -- '63 - '64.

4 I got my master's in public health from the

5 University of Minnesota. That's all.
6 Q. Was there an area of specialization with your
7 M.P.H.?
8 A. Health education. Public health education.
9 Q. Now the B.S. that you obtained from the
10 college -- is it the College at St. Catherine's or
11 "College of"?
12 A. It's "College of."
13 Q. Was that in a particular area?
14 A. St. Paul, Minnesota. Oh, the --
15 Q. I'm sorry, a particular area of
16 specialization?
17 A. Home economics. Economics. Business.
18 Q. Now did you enter the workforce after
19 graduating from college in 1958?
20 A. Yes.
21 Q. Could I ask you if you would, please, to
22 sketch out for me what your employment history has been
23 from 1958 until the time that you joined the Tobacco
24 Control Section.
25 A. Okay. I was first -- in the summer of '58 I
26 worked for General Mills in their public relations
27 department. In the fall I joined the American Red Cross
28 as a recreation worker in Korea, and in 1960, when I

9

1 returned, I was a recreation worker at the US Naval
2 Hospital in Corpus Christi, Texas.
3 Dates, I'm not real positive.
4 In 19... For about four months I was -- no,
5 that's not right. I went from the US Naval Hospital in
6 Corpus Christi to New Orleans, where I worked for Tulane
7 University.
8 Q. And what job function were you performing for
9 them?
10 A. I was in charge of off campus student
11 housing. Then I went to -- from New Orleans to
12 Minneapolis, where I worked for the Marquette National
13 Bank. I absolutely do not remember what my job title
14 was.
15 Q. Fair enough.
16 A. It was in the employee payroll.
17 And from there I went to the University of
18 Minnesota School of Public Health to get my master's
19 degree in public health.
20 Q. Now that gets us up to roughly 1964?
21 A. Correct. In late '64 I went to St. Louis --
22 St. Louis County, Missouri, and I was there for about
23 eight years as a health education specialist, and in
24 December 1973 I came to California and worked for the...
25 It was the Health Systems Agency in Ventura
26 County, the Public Health Service's piece of the Health
27 Systems Agency. And in 19... January of 1990 I came to
28 this program, the State of California.

10

1 Q. Now could you tell me how it occurred that
2 you left Ventura County and came to Sacramento to join
3 the Tobacco Control Section?
4 A. Why did I do that?
5 Q. How did it occur.
6 A. How did it occur?
7 Q. Right.
8 A. I had taken an oral exam. I was on the list.
9 They contacted me if I was interested in

10 working for this program and I said I was.
11 Q. What type of oral exam --
12 A. There's something I forgot.
13 Between Ventura County and State of
14 California I left public health and I was a financial
15 planner with IDS American Express, then I came here.
16 Q. So you couldn't leave home without it, right?
17 A. Right.
18 Q. About how long did you serve in the capacity
19 as a financial planner?
20 A. Two years.
21 Q. Do you have a general idea as to when those
22 two years were?
23 A. When those two years were?
24 Q. Yes, ma'am.
25 A. Yeah, '88 - '89.
26 Q. So from roughly 1973 to 1988 you worked in
27 Ventura County in public health.
28 You then spent '88 and '89 as a financial

11

1 planner, and in January of 1990 you joined TCS?
2 A. Correct.
3 Q. Now you indicated there was an oral exam that
4 was administered.
5 A. That's the state system of hiring. They set
6 up a -- you go through a process where you're -- you
7 have an oral exam, along with probably many other
8 people, then you are scored and you are ranked and you
9 are placed on a certified list, and when positions come
10 up you're notified. If you want to have an interview in
11 the position, you follow up on that.
12 That's basically the...
13 Q. Now was the exam oriented towards tobacco in
14 any way, or is this a general oral exam administered by
15 the State?
16 A. It's general, just general principles of
17 health education.
18 Q. Now when you joined the Tobacco Control
19 Section in January of 1990, what was your job title?
20 A. My job title was Health Education
21 Consultant III. That's I-I-I.
22 Q. How many grades of health education
23 consultant are there?
24 A. There's I, II, and III.
25 Q. And for how long did you hold that position?
26 A. I don't remember exactly. I was in that
27 position for at least -- at least four years. I'm sure
28 it was four years. After that, I'm not positive.

12

1 Q. Now in roughly 1994 what was the next
2 position you held?
3 A. Health Program Manager II.
4 Q. Health Program Manager II?
5 A. Correct.
6 Q. And for how long did you hold that position?
7 A. I still hold it.
8 Q. So you've had that from '94 forward?
9 A. Correct. '94, '95.
10 Q. Would you outline for us what job duties you
11 performed as a Health Education Consultant III, for the
12 four years you held the position.
13 A. I was basically in charge of the local lead
14 agency piece of the program.

15 Q. And by "in charge," what exactly did you do?
16 A. To ensure that requests for proposals -- I'm
17 sorry -- for local lead agencies, that guidelines,
18 program guidelines, were written for them to respond
19 with a comprehensive tobacco control plan, to ensure
20 that they were provided with training. Compliance
21 monitoring their plan -- approving their plans.
22 Q. So during this four-year period of time did
23 you actually participate in the writing of guidelines
24 for the local lead agencies?
25 A. I participated. I wasn't the only one that
26 wrote the guidelines.
27 Q. Who else was involved in the creation of
28 guidelines?

13

1 A. At that point, April Roeseler.
2 Q. Anybody else?
3 A. I don't recall who else.
4 Q. Now can you give me some idea of what these
5 guidelines... What were they designed to achieve?
6 A. They were basically to... It was basically
7 to set up a... what's the format. I hate to use the
8 word "paradigm," but it was to basically set up a format
9 and the kinds of activities that we expected local lead
10 agencies to respond to in a comprehensive control plan
11 in the legislation. They're responsible for the success
12 of the tobacco control programs in their jurisdiction.
13 So there was a number of responsibilities that they had.
14 Q. When you wrote these guidelines, were they
15 standardized, in the sense that they would apply to
16 every local lead agency?
17 A. Correct.
18 Q. And essentially what you're telling them is
19 what they need to do to basically ensure that they have
20 a comprehensive tobacco control plan?
21 A. It wasn't an edict, it was state -- it was
22 structured in such a way that they had considerable
23 latitude to develop activities, interventions, that were
24 appropriate for their area.
25 Q. So long as they met --
26 A. What they said they were going to do.
27 Q. And they complied with what the guidelines
28 indicated they had to achieve in their jurisdiction?

14

1 A. Correct.
2 Q. You indicated a second function that was
3 performed was providing training. Yes?
4 A. Correct.
5 Q. What kind of training did you provide?
6 A. We had a contractor do that.
7 Q. Now what kind of training?
8 A. What kinds of training?
9 How to plan a program, how to mobilize a
10 community, how to work in your community to develop
11 policy, how to write good brochures.
12 Q. You also mentioned that a third function was
13 compliance monitoring.
14 A. Correct.
15 Q. You'll have the hang of this by the end of
16 the day, believe me. What kind of compliance monitoring
17 were you doing?
18 A. Well, they were given a certain amount of
19 money to spend, and they were accountable to spend that

20 money for their particular program activities.
21 So they needed to be -- to make sure that we
22 had accountability that they were spending the money
23 that they said they were, on things they said they were
24 going to spend it on, as well as the activities that
25 they were actually doing, the activities that were in
26 their plan.

27 Q. Now how was the accountability achieved to
28 ensure they had complied with the objectives of the

15

1 program?

2 A. They provided us with cost reports and with
3 progress reports.

4 Q. And was one of your functions to review the
5 cost reports and the progress reports?

6 A. We worked with a contract analyst to review
7 the cost reports. It's another part of the Tobacco
8 Control Section that did that, but we worked together.

9 A health educator and a contract analyst were
10 assigned each local lead agency.

11 Q. Now the progress reports, was that, again, a
12 contract analyst and a health education --

13 A. Team.

14 Q. -- consultant, did you both review the
15 progress reports together?

16 A. I can't speak for the contract analyst, but
17 yes, I reviewed the progress reports.

18 Q. Now when you would complete your review of
19 the local lead agency progress reports, are you then
20 required to make a report up the chain of command to
21 somebody else?

22 A. No, not unless there was a problem.

23 Q. A problem would be a local lead agency either
24 overspending or not complying?

25 A. Correct.

26 Q. Now did you have many problems with the local
27 lead agencies, in the first four years of the program
28 that you administered?

16

1 A. The first four years? There might have been
2 a couple, but no, not... I don't recall the problems
3 that did exist at that time.

4 Q. Now once the progress reports reach you --
5 and tell me if I'm wrong -- but other health education
6 consultants who were supervising other grantees, is
7 there ultimately any kind of report that is prepared on
8 a periodic basis, every three months, every six months,
9 every year, that summarizes the results of the progress
10 reports so you have some idea of what's occurred over
11 that fiscal year?

12 A. No.

13 Q. Has anyone ever talked about that at all?
14 Having something like that done?

15 A. Not that I recall.

16 Q. Is there a reason why that's not done, that
17 you're aware of?

18 A. I don't know.

19 I know one reason is that... probably the
20 only reason is that workload was very heavy.

21 Q. Do you retain all of the progress reports, or
22 do you have a document retention policy where, after so
23 many years...

24 A. We have a document retention policy. I don't

25 recall exactly what that is right now.
26 Q. So some portion of these progress reports are
27 probably being written on as we speak?
28 We have to have an audible response.

17

1 A. I'm sorry, what was the question?
2 Q. That we are probably writing on some of the
3 progress reports, in the sense that they've been
4 destroyed and may wind up as recyclable paper?
5 A. Oh, I don't know.
6 Q. What is the period of time for which you
7 carry or hold on to the progress reports?
8 Is it five years?
9 A. I think it's five years. I really don't know
10 for sure. They go through different stages, places.
11 Q. Now besides the health education consultant,
12 who else would see the progress reports from the local
13 lead agencies during the 1990 to 1994 time frame?
14 A. Well, the... the progress reports.
15 I don't know.
16 Q. Besides the progress reports and... and I'm
17 sorry, you mentioned one other report that the contract
18 analyst would look at.
19 A. Cost reports.
20 Q. Besides the cost report and the progress
21 reports, were there any other reports submitted to you
22 by the local lead agencies during the '90 to '94 time
23 period, wherein they were reporting what they were
24 accomplishing in the field?
25 A. Not that I recall.
26 Q. Were there any other job duties that you
27 performed from the 1990 to 1994 time frame, that fall
28 under health education consultant Grade III, besides

18

1 working with the local lead agencies?
2 A. Well, I was a supervisor. I supervised the
3 other health education consultants.
4 Q. You were the senior health education
5 consultant?
6 A. Correct. There were two of us at that time.
7 Q. Who was the other?
8 A. Carol Motylewski.
9 Q. Is she still with the program?
10 A. No.
11 Q. Now as the supervisor, what were your job
12 duties?
13 A. My job duties were to be sure that the staff
14 was carrying out their assignments in a timely way, that
15 they were helpful to the contracts, to the programs to
16 which they were assigned, that they called to my
17 attention any problems that might exist.
18 I needed to make sure that the staff had
19 professional development opportunities, that they
20 related with each other and with their contract as well.
21 Q. How many health education consultants did you
22 have reporting to you as the supervisor?
23 Estimate would be fine.
24 A. I can't really say at that point in time,
25 because our vacancy rate fluctuated and some of the
26 health education consultants were assigned to both local
27 lead agencies and competitive grants. I had
28 approximately four that were assigned to me.

19

1 Q. The other senior supervisor, Carol, how many
2 did she have reporting to her?
3 A. Approximately the same, but it did fluctuate
4 because of vacancies.
5 Q. Now were you provided with any special
6 training internally, prior to taking over your position
7 as this Grade III health education...
8 A. No.
9 Q. Did you receive any training during the first
10 four years you were with the section which was designed
11 to assist you in the execution of your duties?
12 A. There were internal trainings, department
13 trainings, of a personnel nature. Affirmative action.
14 Q. Besides affirmative action?
15 A. No.
16 Q. Well, strike that. Are these trainings the
17 type of training you would normally receive in just
18 about any branch of the state government, or were they
19 uniquely designed to deal with the issues raised?
20 A. No, these were what anybody in the department
21 at that level would receive.
22 Q. The contract reports that you mentioned
23 earlier, what kind of information was contained in
24 those?
25 A. What contract reports are you referring to?
26 MR. GROSS: It was cost reports.
27 MR. L'ORANGE: Q. There were two reports
28 that were passed up the chain to you, a progress report

20

1 and --
2 A. And a cost report.
3 Q. -- and then there was a cost report.
4 What was contained in the cost report?
5 A. Basically it was the -- like an invoice.
6 It was the money that they had spent and the
7 balance carried forward.
8 Q. Tell me if I'm wrong, but each local lead
9 agency would have a certain amount of money assigned to
10 it --
11 A. Correct.
12 Q. -- to pay for its programs?
13 A. Correct.
14 Q. Now periodically they would forward up cost
15 reports reflecting what portion of that money has been
16 spent and what portion is carried forward, true?
17 A. Correct.
18 Q. And that cost report is submitted at the same
19 time a progress report goes to you, which provides you
20 with an evaluation?
21 A. Not necessarily.
22 Q. Are they submitted independently?
23 A. They're submitted independently.
24 Q. Was there a periodic frequency by which cost
25 reports --
26 A. Correct.
27 Q. How often did you get them?
28 A. That changed, so it depends upon what year

21

1 you're talking about.
2 Q. How about '90 to '94?
3 A. It changed within that time, and I can't
4 recall when that changed.
5 Q. Was there a maximum and minimum periods of

6 time? For instance, you had to submit them every month
7 for a period of time, then it shifted to every six
8 months?
9 A. I think at some point they were submitted
10 like quarterly, and progress reports were eventually
11 submitted twice a year.
12 Q. Are cost reports still submitted to health
13 education consultants on a regular basis?
14 A. They're submitted to the contract analyst on
15 a regular basis.
16 Q. And progress reports are still submitted on a
17 semiannual basis to the health education consultants?
18 A. Correct. To the best of my knowledge.
19 Q. Now from 1994 - 1995 to the present you have
20 been a Health Program Manager Grade II?
21 A. Correct.
22 Q. What are the nature of the job functions that
23 you carry out in that position as a Health Program
24 Manager II?
25 A. I was a -- first I supervised the local
26 programs unit, which included both the local lead
27 agencies and the competitive grantees.
28 Q. And for how long -- I'm sorry, go ahead.

22

1 A. I don't recall the exact number of years, but
2 I probably did that for about -- I can't -- I just don't
3 remember the exact number of years. But I went from
4 there to head of -- did somewhat of a reorganization and
5 I was in charge of program services, which included both
6 the evaluation unit and the local program unit.
7 Q. Now is that the position you hold today?
8 A. It's a good question. Since last June I have
9 been acting assistant division chief for the Division of
10 Chronic Disease and Injury Control.
11 Q. I'm sorry, division of...
12 A. Chronic disease and injury control.
13 Q. Does the Tobacco Control Section fall under
14 the Division of Chronic Disease and Injury Control?
15 A. Correct.
16 Q. Are you wearing two hats? In other words,
17 are you still in charge of local or program services?
18 A. No, no. I'm just in that position.
19 And that's difficult to explain, but...
20 Q. In terms of percentages of time, how much of
21 your time is taken up with your duties as the acting
22 division chief, as opposed to time that you would spend
23 on tobacco control?
24 A. Oh, a hundred percent. A hundred percent.
25 Q. Who is currently the head of program
26 services?
27 A. It's vacant.
28 Q. While there may not be anyone wearing the hat

23

1 of head of program services, has there -- is there
2 someone who has stepped in to take over those job duties
3 in the interim?
4 A. Not that I am aware of.
5 Q. As acting division chief, do you have any --
6 A. Assistant division chief.
7 Q. See, I gave you a promotion already.
8 As the acting assistant division chief, do
9 you have any contact with tobacco control?
10 A. Yes.

11 Q. What is the nature of that contact?
12 A. The nature of the contact, as with the other
13 branches in the sections, is to primarily make sure the
14 division is running operationally, it's running
15 smoothly, and to respond to drills, assignments from the
16 director's office and prevention services, the
17 legislature, the hierarchical requests.

18 Q. Just to abbreviate it on the record, the
19 Division of Chronic Disease and Injury Control, can we
20 just refer to that as "the division" through the
21 deposition?

22 A. Correct.

23 Q. Now does the division set any policies for
24 tobacco control?

25 A. Only in that there are department policies.
26 For example, you may not contact a legislator
27 or their staff person directly. You have to go through
28 the legislative government affairs office and the

24

1 hierarchy within the department. That's an example of
2 the kinds of policies, and there's quite a -- you have
3 to look at the administrative manuals.

4 Q. So if I'm in tobacco control and I want to
5 talk to somebody in the legislature, I might be able to
6 do that, but I've got to go through the legislative
7 affairs office which is at the division level?

8 A. You'd have to be asked -- they have to
9 request that you do that. The only time that you would
10 be allowed to contact a legislative -- legislator's
11 office is if you're doing a bill analysis and you need
12 information about the intent of that bill.

13 Informational only. Then that's... and if a
14 legislator calls you, you report that back.

15 Q. Now with respect to tobacco control, are its
16 policies in any way set by the division?

17 What I'm trying to get is some feel for how
18 tobacco control functions -- and strike that.

19 Let me rephrase the question.

20 Is tobacco control included within the
21 division as one of its branches?

22 A. Correct. It's -- the division has three
23 branches. The Tobacco Control Section is within the
24 cancer control branch. The division primarily deals
25 with branch chiefs.

26 Q. And that would be Mr. Bal?

27 A. Correct. Dr. Bal.

28 Q. And what are the other two branches within

25

1 the division?

2 A. The one is the chronic disease control
3 branch, and the other is epidemiology and prevention...
4 prevention... I don't remember the exact title.

5 It's injury control.

6 Q. Now what is the relationship between the
7 Tobacco Control Section, as part of the cancer control
8 branch and the division? Are TCS' policies set by the
9 division? Do they have to be approved by the division?
10 Or does it operate in almost an autonomous fashion?

11 A. The policies for the Tobacco Control Section
12 are the same as for any other section in any other
13 branch, and they're department policies.

14 Q. Department of Health Services?

15 A. Correct.

16 Q. So DHS sits at the top of the mountain and
17 lays out policies?
18 A. Well, the legislature does and the governor.
19 We're part of the executive branch.
20 Q. So the governor may dictate policy to the
21 legislature, who in turn --
22 A. No, he doesn't dictate. This one is trying
23 to dictate policy. But he dictates policy to his
24 department heads, and the department heads to their
25 executive committee, and on down to...
26 Q. And eventually it gets to DHS?
27 A. It gets to DHS, and then it goes down our
28 hierarchy to -- eventually to the division, and the

26

1 division communicates with the branch chiefs and then
2 the branch chiefs communicate to their people.

3 Q. Do you have an estimate for the period of
4 time -- two years, three years, one year -- that you
5 served as head of program services?

6 A. It was approximately three years.

7 Q. And I believe Ms. Roeseler fills that
8 position now?

9 A. No.

10 Q. I'm sorry, that's right.

11 You told me it's vacant.

12 As the head of program services, what were
13 your job duties or responsibilities?

14 A. To supervise the local programs unit and the
15 evaluations unit. Data analysis and evaluations unit.

16 Q. When you say supervise those units, what
17 specifically did you do over that three-year period?

18 A. I ensured that RFPs and RFAs were written,
19 that local lead agencies guidelines were written, that
20 the money was allocated accordingly, contracts
21 negotiated. Problem solving, if that was required, any
22 handling, any personnel problems. I was responsible for
23 some of the hiring. And the evaluation unit was
24 basically the same; to ensure that the contract -- that
25 RFAs were released and that there was responses and that
26 the review process was set up and contracts awarded.

27 Q. We had some discussions with Mr. Hunting
28 yesterday, and he wasn't sure -- he knew there was a

27

1 difference between RFPs and RFAs, but he wasn't sure.

2 A. Yeah, me neither. I'm not sure either.

3 Q. Can we use those terms interchangeably today?

4 A. Sure.

5 Q. Now can you tell me the steps that you went
6 through, during the three years that you were head of
7 program services, with respect to how money was
8 allocated to the programs? What's that process?

9 A. The process -- basically for the local lead
10 agencies that was set in legislation on a formula basis,
11 so that was pretty cut and dry.

12 In terms of the amount of money that was
13 awarded to competitive grantees, that was totally
14 dependent upon the governor's budget or any legislation
15 that was passed that would influence that.

16 Q. Now when you say that monies were awarded to
17 local lead agencies based on a formula, do you know how
18 that formula works?

19 A. It's in the legislation.

20 Q. Are you familiar with the components or the

21 factors that make up the formula? In other words, how
22 do you arrive at how much money San Francisco gets,
23 versus, let's say, Tulare County?

24 A. No, I'm not part of that at all.

25 Q. Do you have any idea whether it's based on
26 amount of population?

27 A. I really can't answer that.

28 Q. But the formula itself, it's your

28

1 understanding, is set forth in the Prop --

2 A. Legislation.

3 Q. -- Prop 99 legislation?

4 A. Yes.

5 Q. Would that be the enabling legislation that
6 we're talking about?

7 A. Correct.

8 Q. Now you indicated that the grantees'
9 allocations are dependent upon the governor's budget?

10 A. Correct.

11 Q. Do you have any understanding as to -- strike
12 that. Let me rephrase the question for you.

13 Does TCS, in looking over the number of
14 grantees that it has working for it at any one time in a
15 fiscal year and what it wants to accomplish, come up
16 with a budget which is then submitted to the governor's
17 office?

18 A. No. Basically it's laid out in the
19 governor's budget. We may put forward recommendations
20 which they may or may not take into account.

21 Q. Can you tell me how those recommendations
22 have been made during the time that you were head of
23 program services. I take it the governor's budget isn't
24 created in a vacuum. They have some idea of what you're
25 looking for for funding?

26 A. I cannot speak to how the governor's budget
27 is created.

28 Q. That gives me cold comfort as a taxpayer.

29

1 Are there discussions between Tobacco Control and anyone
2 in the governor's office as to the amount of money that
3 the program would like to obtain in any fiscal year?

4 A. There's discussion about those items, we'll
5 say up the hierarchical layout or within the department.

6 When the budget, governor's budget is being
7 prepared, without getting into the whole budget process,
8 they have such things as trailer bills, and we may make
9 recommendations to add, change -- whatever.

10 But whether that happens or not is -- those
11 decisions are made by the department and the department
12 of finance. Quite a bit above us.

13 Q. You at some point, as a department -- and I'm
14 speaking of TCS -- get the governor's budget with the
15 allocations for tobacco control?

16 A. Correct.

17 Q. Now once you get those numbers, do you revise
18 existing contracts if the totality of those contracts
19 exceed the budget, or do those budget numbers apply to
20 new contracts and you simply allocate and get the money
21 to go as far as you can, given what you've been given?

22 A. Well, we try to get the money to go as far as
23 it can. That's a complicated question, because in
24 almost every RFP that goes out we say, you know, funding
25 is dependent upon available funds. And so we may create

26 a contract for a period of three years, and we may or
27 may not have funding available for the last year.

28 Q. What happens when that occurs?

30

1 A. Well, so far it hasn't. If it did occur, we
2 would just have to, you know, end the contract.

3 Q. Have there been occasions where a contract
4 may call for X amount of money to be spent over three
5 years, but because of budget allocations the amount of
6 money available is X minus?

7 A. That has happened with the local lead
8 agencies.

9 Q. To your knowledge, have any competitive
10 grantee activities, their contracts, been reduced in
11 scope or funding because of the budget proposed by the
12 governor, or have those cuts fallen solely on the local
13 lead agencies?

14 A. The cuts... There's been substantial cuts.
15 Primarily, instead of funding a hundred
16 competitive grantees, we may only fund 40, if the
17 funding is cut back.

18 Q. Now was there a period of time over the last
19 ten years when what would have been Prop 99 monies were
20 diverted to other programs?

21 A. I can't speak to where the money went.
22 I don't know that. But I do know that the
23 program was cut, right around 1994, practically in half.

24 Q. Now was that funding restored at some later
25 point?

26 A. It's been partially restored in later years.

27 Q. Were the funding cuts generally in the 1994
28 to 1996 time frame?

31

1 A. You would have to... You would have to know
2 that on a year-by-year basis.

3 Q. Is there any document -- I'm sorry.

4 A. Every year was different.

5 Every year of funding was different.

6 Q. From the period roughly 1996 to the present,
7 has the amount of funding dedicated to the program
8 increased?

9 A. Increased over what?

10 Q. Over the four-year period, as compared to
11 what was being dedicated to it in the previous years.

12 A. I can't really speak to that right now
13 because I've been away from the program for a year.

14 Without -- I can't answer that accurately.

15 Q. Going back to your testimony for a moment
16 where you indicated that there may have been occasions
17 where you had to reduce the number of grantees because
18 of funding cuts, the grantees who were funded, were any
19 of their contracts and activities cut back because those
20 grantees lost funding, or were they funded fully?

21 A. Contracts ended because that was the end of
22 the contract. It was the period of term. What did
23 happen was many of those contracts could not be renewed.

24 MR. L'ORANGE: Off the record.

25 (A discussion was held off the record)

26 MR. L'ORANGE: Q. Ms. Russell, I'm going to
27 show you what has been previously marked in the
28 deposition of Ms. Roeseler Exhibit 117, and I'm going to

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1 direct your attention to a page which has been marked

2 896 and I'd ask you, if you would, to look at the
3 information on that page.
4 I believe we have already established that
5 Dr. Bal is still the head of the cancer control branch.
6 A. Correct.
7 Q. Now it's our current understanding that
8 Ms. Roeseler is still the chief of local programs unit?
9 A. Unit, correct.
10 Q. Is Dr. Johnson still the chief of data
11 analysis and evaluation?
12 A. No, no.
13 Q. Who fills that job now?
14 A. Bill Ruppert.
15 Q. On program support, is Jeri Day still in
16 charge?
17 A. No.
18 Q. Who fills that job?
19 A. I don't know. That was a recent...
20 Q. Now with respect to administrative and
21 contract support unit, is Robin Shimizu still the chief,
22 to the best of --
23 A. Excuse me. I do know who fills program
24 support is Doug Robbins.
25 Q. Doug Robbins?
26 A. Right.
27 Q. With respect to technical services, is Robin
28 Shimizu still the chief?

33

1 A. Correct.
2 Q. Is Ms. Palmer still the chief of the
3 administrative and contract support unit?
4 A. Correct.
5 Q. Ms. Stevens is still the chief of the media
6 campaign unit?
7 A. Correct.
8 Q. And I assume Mr. Lloyd is still in program
9 planning and policy development?
10 A. No.
11 Q. Who fills that job?
12 A. I don't think it's filled. I don't know.
13 Q. You've outlined for us basically -- I'm
14 sorry, strike that. Now program services, while it
15 shows you as the chief, your testimony is that position
16 is currently vacant?
17 A. I have to explain this just a little bit.
18 We have budgeted positions. This is a state
19 thing. There was a vacancy in the assistant division
20 chief, sort of. The person who was the assistant
21 division chief went up as assistant deputy director for
22 prevention services. I interviewed -- I was on the list
23 for the Health Program Manager III. I interviewed for
24 it, I was offered the position, and I have since then
25 been waiting for my promotion to be approved by the
26 director's office. So in the meantime, I am technically
27 in this position, although I'm not functioning in it.
28 Q. As head of program services?

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1 A. Correct. And the person who was assistant
2 division chief is functioning as technically in the
3 Health Program Manager III position, but is functioning
4 as an active head of program services, since nobody has
5 appointed people. It's administrative.
6 Q. But currently a hundred percent of your time

7 is devoted --
8 A. Yeah, definitely a hundred percent.
9 Q. One other suggestion.
10 If both of us talk at the same time, the
11 court reporter goes nuts trying to get everything, so
12 I'll make a deal with you. I promise not to interrupt
13 you and vice versa, we'll get a clean record.
14 A. Okay.
15 Q. Now a hundred percent of your time currently
16 is involved in the position. You're waiting for the
17 formal appointment, though, for the acting division
18 chief or assistant division chief?
19 A. Correct, correct.
20 Q. Since June of last year have you performed
21 any duties at all as chief of program services?
22 A. No.
23 MR. L'ORANGE: Can we take about five minutes
24 and let me consult with my colleagues for a moment and
25 we'll be right back.
26 (A recess was taken from 10:37 to 10:45 a.m.)
27 MR. L'ORANGE: Q. Ms. Russell, what I'd like
28 to do is focus on the 1994 to June 1999 time frame.

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1 Those five years when you were part of the
2 Tobacco Control Section. This is a clumsy way to ask
3 this, but it's the only way I know how to get into it.
4 As the chief of local programs for the period
5 of time that you held that position, did you have the
6 authority to influence the types of programs that were
7 being handled by the local programs unit?
8 MR. MANSFIELD: Okay, the word "influence"
9 has many connotations. Can you tone it down a bit?
10 Maybe like by examples or...
11 MR. L'ORANGE: Q. Let me go at it this way:
12 When you assumed your position as the chief
13 of local programs, was there a particular theme or a
14 message that the grantees and the local lead agencies
15 were presenting to the residents of the state of
16 California?
17 MR. MANSFIELD: Regarding?
18 MR. L'ORANGE: Tobacco. ETS particularly.
19 THE WITNESS: Well, one of the
20 responsibilities of the local lead agency was to
21 organize a coalition representing their community, and
22 we didn't give orders. There was a lot of autonomy
23 given to the community coalitions. We planned. When we
24 did the guidelines for local lead agencies, we had work
25 groups and we planned together what we wanted the
26 program to accomplish or the directions to go. We
27 didn't do this in a closet. We actively sought the
28 advice and the assistance of the people we worked with

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1 locally and statewide on our directions.
2 MR. L'ORANGE: Q. Let me rephrase the
3 question for you and try it this way: From previous
4 testimony it's our understanding that from the outset of
5 the tobacco control program, it had essentially three
6 goals or objectives. The first was to reduce exposure
7 to environmental tobacco smoke, the second was to
8 counter pro-tobacco influences, the third was to reduce
9 youth access. Would you agree with that statement?
10 A. I would say that those were not the
11 priorities at the outset.

12 They evolved very quickly to those.
13 Q. Now when you took over the position as chief
14 of the local programs unit, were those the three
15 priorities at that time?
16 A. I don't recall the exact date that we
17 established those three priorities across the board, but
18 those three activities, those three strategies, were
19 definitely a part of competitive grants and local lead
20 agencies.
21 Q. At the time you became chief of local
22 programs?
23 A. Correct.
24 Q. Now my original question was really designed
25 to elicit information as to during the period of time
26 that you were the chief of the local programs unit, did
27 those priorities change in any way?
28 A. No.

37

1 Q. Did any of the priorities, during the time
2 you were the chief of local programs, receive increased
3 attention, as opposed to the other two priorities?
4 A. By attention you mean media -- what do you
5 mean by "attention"?
6 Q. I'm sorry. I don't --
7 A. Attention from whom?
8 Q. Because I don't work within a program, it's
9 hard to get a feel for how it operates, but from 1994
10 forward was there, within the program, an increased
11 emphasis placed on reduction of exposure to
12 environmental tobacco smoke which could have been
13 manifested by an increased number of grantees dealing
14 with that issue, increased funding, increased media
15 attention? That's essentially the kinds of information
16 that I'm trying to get.
17 A. No. No. It's always been pretty even.
18 Evenly emphasized through the years.
19 Q. Now would that be true for funding during the
20 time that you were chief of local programs, that the
21 amounts of money received by TCS were allocated
22 generally evenly across those three priorities?
23 A. They were generally allocated across those
24 three priorities, plus whatever activities were -- the
25 local programs wanted. Local lead agencies or grantees.
26 Especially the local lead agencies.
27 Q. When a competitive grantee submits its
28 response to an RFP, is that response -- strike that.

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1 When a competitive grantee submits its
2 response to an RFP created by the local programs unit
3 during the time you were the chief, would its
4 application address the three priorities that we've
5 talked about?
6 A. It might address one, one or more than one of
7 them, and other things as well.
8 Q. Now when your unit, during the time you were
9 chief, would analyze these responses, was there an
10 attempt to make sure you had an equal number of grantees
11 addressing ETS as you did countering pro-tobacco
12 influences as you did reducing youth access to tobacco?
13 A. Would you ask that again? I'm sorry.
14 Q. What I'm driving at is when you would analyze
15 the applications by the grantees, was there an attempt
16 to keep an equal division of labor amongst the three

17 priorities?

18 A. A grantee, again, might address one, two or
19 three of those priorities and some of their own, so it
20 wasn't an attempt to say one-third of the money will go
21 for ETS, one-third will go for this and one-third will
22 go for that. No, we didn't do that.

23 Q. If you would, what steps were taken, if any,
24 during the time that you were chief of local programs,
25 to make sure that you had an equal emphasis on each of
26 the three priorities?

27 A. We never said that there had to be an equal
28 emphasis on the three priorities.

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1 Q. Do you have any reason to believe that during
2 the time that you were chief of local programs ETS was
3 not emphasized as strongly as the other two priorities,
4 or would it be your estimate that equal attention was
5 devoted to each of the three priorities?

6 A. I couldn't say if it was equal, because I
7 would have to go back. And there would be no way to
8 determine if it were equal, because it depended upon the
9 quality of the application, the geographic location, any
10 number of things.

11 Q. From 1994 until you left the section in June
12 of 1999, was there ever a change in the amount of
13 resources devoted to ETS, either up or down, that you're
14 aware of?

15 A. No.

16 Q. Would it be a fair statement for me to make
17 that ETS was emphasized as strongly as countering
18 pro-tobacco influences and reducing youth access during
19 that roughly five-year period?

20 A. I would say the emphasis for the two would
21 be -- countering pro-tobacco influences and ETS -- were
22 similar.

23 Q. In the sense that there was a little more
24 devoted to them than reducing youth access, would that
25 be fair?

26 A. Correct.

27 Q. Did you ever participate, in the five-year
28 period that I'm talking about, in discussions within the

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1 cancer control branch that increased emphasis would be
2 devoted to ETS in any way?

3 A. Overall, no.

4 Q. And what do you mean by "overall, no"?

5 A. When you're looking at the total allocation
6 of funds.

7 Q. Were there periods of time where there was an
8 increased emphasis --

9 A. Correct.

10 Q. -- on ETS?

11 A. Correct, correct.

12 Q. Could you give me your best recollection as
13 to the periods of time in which the section emphasized
14 or placed an emphasis on ETS?

15 A. It was more an emphasis placed on us by
16 enactment of the legislation. Assembly Bill 13 would
17 provide for smoke-free work sites. And again, in 1998,
18 when the smoke-free bar provision of AB 13 went into
19 effect -- actually, it was AB 3037.

20 I believe that's the correct bill number.

21 Q. Let me make sure that I understand what

22 you've said. In the time periods in which the
23 legislature was considering and enacting AB 13 which
24 dealt with smoke-free work sites and AB 3037 which dealt
25 with smoke-free bars, there was increased emphasis on
26 the Tobacco Control Section to orient its activities
27 towards ETS?

28 A. Not all of its activities. They still had to
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1 respond to their contract, only in that a law was
2 enacted that we needed to provide information to people.

3 With this law entailment, that was it.

4 Q. Did that mean that some greater portion of
5 the resources available to you had to be directed to ETS
6 in order to get the word out about AB 13 and 3037?

7 A. By "resources" you mean?

8 Q. Increased number of grantee programs,
9 increased media campaign, increased funding of public
10 relations activities.

11 A. Oh, well, I can't speak for the media and
12 public relation activities, because that was outside of
13 my jurisdiction. Mostly staff time.

14 Q. Increased amount of staff time directed to
15 ETS-related issues?

16 A. Only regarding the enactment of the law.

17 Q. When you say increased staff time, what
18 exactly was occurring on staff?

19 Was it the staff analyzing the legislation
20 and talking about it, or was it --

21 A. Well, there was some of that, correct. There
22 was some bill analyses. But that was -- I'm sorry.

23 Q. I'm sorry, go ahead.

24 A. But this is standard procedure on any bill
25 that would impact department programs, so that's nothing
26 unusual. I'm sorry, what was your question again?

27 Q. What other staff time was consumed by ETS
28 issues during the time of AB 13 and 3037?

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1 A. It was primarily meeting with the local
2 programs, particularly local lead agencies, and helping
3 to educate their community about the particular law.

4 Q. Now in educating the local communities about
5 the laws concerning smoke-free bars and workplaces, were
6 the hazards of ETS, to your knowledge, discussed by the
7 competitive grantees with the populations they served?

8 A. Well, not all of the competitive gran -- I
9 don't know what competitive grantees were dealing with
10 that issue at that time.

11 Q. Do you know if local lead agencies, in
12 designing programs to reach the populations about
13 smoke-free workplaces and bars, would address the
14 hazards posed by exposure to secondhand smoke?

15 A. I can't really tell you what exactly the
16 local communities did. I wasn't there. There wasn't
17 any change, I would say, over the years in the emphasis
18 about the hazards of exposure to secondhand smoke.

19 Q. So basically at least for the five years we
20 are talking about, messages about ETS were routinely
21 delivered through local lead agencies or competitive
22 grantees, true?

23 A. Some competitive grantees.

24 Q. And that with respect to the periods when
25 AB 13 and AB 3037 were being passed, there was increased
26 staff activity in order to educate the local lead

27 agencies or grantees about those two pieces of
28 legislation?

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1 A. Correct.

2 Q. Fair enough. Okay.

3 Now during the time that you served either as
4 the chief of local programs or the chief of program
5 services, were there ever any evaluations done which
6 were designed to determine the percentage of the
7 population that had been made aware of the dangers of
8 ETS, either by telephone survey, by personal interview,
9 having an independent contractor go out and gather that
10 information? Any evaluation at all.

11 A. There wasn't especially an evaluation. It
12 was more a surveillance to determine the level of...

13 Q. Awareness?

14 A. Awareness.

15 Q. When you say "surveillance," how were you
16 using that term?

17 A. That means you -- we have -- we do telephone
18 interviews, as part of our contract with University of
19 California San Diego, once every three years.

20 And our in-house adult/youth tobacco survey.

21 Q. I'm sorry, your in-house...

22 A. In-house youth and adult tobacco survey.

23 Q. It's our understanding -- correct me if I'm
24 wrong -- that the University of California at San Diego
25 telephone surveys are customarily performed by that
26 institution with Dr. Pierce --

27 A. Correct.

28 Q. -- as one of the lead researchers? Okay.

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1 Now the in-house youth and adult tobacco
2 surveys, is that what's commonly called CATS?

3 A. Correct.

4 Q. And that's California --

5 A. Adult Tobacco Survey.

6 Q. Now who conducts that for the section? You
7 indicated that was an in-house project. That's not
8 something your people do; you contract that out?

9 A. Through the cancer surveillance section's
10 Public Health Institute contract.

11 Q. And I'm sorry, is Public Health Institute the
12 organization that is contracted with, or is that the
13 name of the contract?

14 A. Correct, the contractor.

15 Q. The contractor?

16 A. Correct.

17 Q. Now how frequently are the CATS -- are they
18 called the CATS survey?

19 A. Yeah.

20 Q. How frequently are the CATS surveys
21 performed?

22 A. That's an ongoing survey, annually.

23 Q. Do you have any idea as to the size of the
24 population that is surveyed in the course of a year?

25 A. I can't remember the exact number. It's in
26 the thousand -- I get it mixed up with the youth one.

27 It's about -- I don't know.

28 I better not answer that one.

45

1 Q. You indicated you get it mixed up with the
2 youth one. I take it there is a separate survey

3 performed on adults?
4 A. Correct.
5 Q. And that's what is called CATS, California
6 Adult Tobacco Survey?
7 A. Correct.
8 Q. Now what is the name of the survey performed
9 on youth?
10 A. It's just called the youth, California Youth
11 Tobacco Survey.
12 Q. And it's performed by the same contractor?
13 A. Same.
14 Q. Are the results of the CATS survey published
15 as the results are from the University of California at
16 San Diego telephone surveys?
17 A. By "published" you mean...
18 Q. Well, let's start with peer-reviewed medical
19 literature. Are they published in there, to your
20 knowledge?
21 A. No.
22 Q. Are they published on a non-peer-review basis
23 in any medical literature that you're aware of?
24 A. No.
25 Q. Are they published on an informal basis by
26 the section or by the cancer control branch, that you're
27 aware of?
28 A. When you say are they published...

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1 Q. I'm sorry. I don't mean in the normal sense
2 that they're going to show up in archives of public
3 health. What I mean is do you create... Strike that.
4 How do you use the data from the CATS survey
5 or from the youth survey?
6 A. To help provide program direction.
7 Q. What program direction do you get from either
8 survey?
9 A. It depends what the findings are.
10 Q. Is ETS one of the subjects that's questioned
11 about in either or both surveys?
12 A. There might be questions in relation to it.
13 Q. On both surveys?
14 A. I can't speak to the youth one.
15 I'm not sure about the youth one.
16 Q. But it is asked with respect to the adult
17 survey?
18 A. Something in relation to it.
19 Q. Now once you get that data tabulated, what
20 effect could that data have with respect to the
21 administration of either the local lead agency's
22 programs or the grantee's programs?
23 A. Well, again, it would help provide program
24 direction.
25 Q. So the Tobacco Control Section makes a
26 conscious effort to take the results from the surveys,
27 analyze them, and then determine what effect it's going
28 to have on the direction of the programs, would that be

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1 a fair statement?
2 A. No.
3 Q. What's wrong with my statement?
4 A. Ask me another way. This is complicated,
5 what you're getting into here.
6 Q. You ought to be on this side of the table.
7 Let's try it this way: The results of the

8 youth and the adult survey are transmitted back to the
9 Tobacco Control Section, true?
10 A. Correct.
11 Q. Now is there some form of analysis that is
12 undertaken by the section to determine what the results
13 of the survey show?
14 A. By "analysis" you mean... no.
15 Q. You look at the results?
16 A. No.
17 Q. Let me ask it this way: What does the
18 section do with the data, once it's returned to it?
19 A. Once we have the data for the year, we send
20 it to prevention services, on to the director, for
21 approval to release the information.
22 Q. Once you get that approval --
23 A. Yes.
24 Q. I didn't mean to interrupt you.
25 A. Once we get that approval. That's the hitch.
26 Sometimes it takes a long time to get that
27 approval. Then we may issue a press release, what some
28 of the data show, depending upon what the data is.

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1 Q. Now what I was driving at earlier is once the
2 section has the approval to release the data, do the
3 health education consultants sit down and look at that
4 data to determine whether it would have any effect on
5 the programs administered by the local lead agencies and
6 the competitive grantees?
7 A. Yes.
8 Q. Are you familiar with that process at all?
9 Have you actually been involved in it?
10 A. I've been involved in it.
11 Q. Can you give me some idea of how that works?
12 A. Well, for example, if the youth smoking
13 prevalence rate is flat or has gone up, that has a great
14 deal of significance, in that we know that we need to do
15 something differently. It may be that the tobacco
16 industry has increased their expenditures in the state.
17 All kinds of different things.
18 So we try to adjust our program to find out,
19 you know, which is the best way to go.
20 Q. Now do you have any idea as to the size of
21 the population that is surveyed in the youth study?
22 A. You're asking a scientific question. I'm not
23 a scientist. There is a formula or -- I don't know if
24 you'd call it a formula or not, where you could do a
25 random sample and -- or a certain number of people, in a
26 certain way, to give you a representative number for a
27 population, the universe. The population at large.
28 Q. There's an extrapolation out from the survey

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1 population?
2 A. It's not an extrapolation, it's... it's a
3 number that you get as a result of a particular random
4 sampling process.
5 Q. Let me show you what was marked in
6 Ms. Roeseler's deposition as Exhibit 124, and if I could
7 ask you to take a moment and look at that.
8 Now have you seen this document before?
9 A. I don't see a date on this. It might have
10 been something published after I left the Tobacco
11 Control Section. I don't know if this is one of them or
12 not. It doesn't look familiar to me.

13 Q. Let me represent to you that this has been
14 identified as setting forth the results of a CATS survey
15 that covered the period from 1994 to 1997.
16 A. Um-hum. Right.
17 Q. Now if you look at the second sheet on page
18 2450, that's the small number in the right-hand corner,
19 it indicates that in 1997 over 4,000 adults were
20 interviewed about their smoking behaviors, attitudes,
21 and beliefs. This was done by a unit of the cancer
22 surveillance section.
23 A. Correct.
24 Q. Now would that refresh your recollection that
25 the adult surveys that are done are generally in the
26 4,000 person range, or does that number vary?
27 A. That's what I'm not sure of, because they may
28 ask certain question of a certain percentage of the

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1 population and not... I... I really can't respond to
2 that accurately.
3 Q. Do you have any understanding as to whether
4 there have been other published documents by the Tobacco
5 Control Section which reflect the results of either CATS
6 studies or youth studies similar to what you've seen
7 depicted here in Exhibit 124?
8 A. Yes, we've done fact sheets, is what these
9 are called.
10 Q. This is a fact sheet?
11 A. Correct.
12 Q. Do you have any idea, in the five years that
13 you were either chief of the local program unit or
14 program services, how many fact sheets were issued?
15 A. I couldn't give you the exact number.
16 Several.
17 Q. By several are we talking about between three
18 and ten? Five and ten? One and ten?
19 A. Somewhere between probably three and ten.
20 Q. Do you know approximately when those were
21 issued?
22 A. No, I don't recall that.
23 Q. Do you have any recollection as to the topics
24 they dealt with?
25 A. Well, I can mention a couple, was youth
26 smoking prevalence and the other -- another one is adult
27 smoking prevalence. Everyone wants to know that.
28 Q. When the data from either the CATS or the

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1 youth surveys are returned to TCS, is it in the form of
2 any kind of report at all?
3 A. No.
4 Q. How is the data provided to you?
5 A. Just data tables.
6 Q. Are the tables collected and given to you as
7 a single document?
8 A. Sometimes all together, sometimes separately.
9 It depends upon when they're completed.
10 Q. Does the cancer surveillance section provide
11 any information with its reports as to either the
12 percentage or the numbers of the population that it
13 believes, based on its surveys, received the information
14 or message that is addressed in the fact sheet?
15 A. No. There's no way they would know that.
16 Q. If you would, if you'd take a look at the
17 second page, bottom left-hand corner, there appears to

18 be a "3/99" beneath the -- about the survey's footnote.
19 A. I'm sorry, where? Oh, this?
20 Q. Yes, ma'am. Last column.
21 A. Oh, 3/99?
22 Q. Would that refresh your recollection at all
23 that this fact sheet was issued in March of 1999?
24 A. No.
25 Q. Now the Pierce reports that we talked about
26 earlier, do you have any understanding as to whether the
27 CATS and the youth survey data are mixed in with the
28 telephone surveys conducted by UC at San Diego, or is

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1 the Pierce data exclusively the results of the UC San
2 Diego telephone survey?
3 A. Their results are exclusively theirs from
4 their survey. Sometimes the questions are the same, but
5 I don't know which ones are.
6 Q. Now besides the fact sheets, are there any
7 other measures of the effectiveness of the Tobacco
8 Control Section's programs, as administered by the local
9 lead agencies or the competitive grantees, that you're
10 aware of?
11 A. Well, there's UC San Diego, the contract with
12 the Gallup organization.
13 Q. The Gallup report, is that what's commonly
14 known as the Wave I?
15 A. Correct.
16 Q. Anything else?
17 A. The local programs do their own evaluations
18 as part of their scope of work.
19 Q. Now that evaluation occurs at the conclusion
20 of the contract, or is it an ongoing process?
21 A. Which evaluation?
22 Q. From the local grantee level or the local
23 contractor level.
24 A. When you do an evaluation, you may do it at
25 different points in time, and it also depends upon what
26 kind of evaluation we're talking about.
27 You need to do it at some times, depending
28 upon what your intervention is, to see whether or not

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1 your program is having an effect or not or what kind of
2 effect. You may need to make a correction.
3 Q. With respect to the local lead agency -- let
4 me rephrase that. Is there a difference between the
5 activities of local lead agencies and the competitive
6 grantees, in terms of the types of programs handled?
7 A. There is a difference, yes. But there is
8 also a difference between local lead agencies, lots of
9 times, depending upon the nature of their jurisdiction.
10 Q. What would be an example of two different
11 types of local lead agencies?
12 A. Well, there's Los Angeles County and Shasta
13 County. One is rural and one is very urban.
14 Q. Is the local lead agency in each county
15 generally the Department of Health Services within that
16 county?
17 A. The local lead agencies are -- the health
18 departments are the official agencies.
19 Q. Now is there a difference between the types
20 of programs that the local lead agencies administer and
21 the programs that competitive grantees are involved in?
22 A. What do you mean by "types of programs"?

23 Q. Well, truthfully, I'm not sure. We have a
24 general understanding that a competitive grantee will
25 apply to your program for funding to implement a
26 particular program. For instance, I have seen
27 competitive grantees who deal with ETS issues amongst
28 the Hispanic population in Santa Barbara County.

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1 What I'm trying to get at is is there a
2 difference in the type of program that a competitive
3 grantee would operate, versus the -- what the local lead
4 agencies do with the monies that are provided to them?

5 A. Yes.

6 Q. What is that difference?

7 A. An example would be in South Central Los
8 Angeles there might be a grantee -- not that there is
9 one -- but that wants to eliminate tobacco billboards in
10 their neighborhoods, whereas that might not even be an
11 issue in Shasta County or Modoc County, so they would do
12 different things.

13 Q. Well, let me take it one step further.

14 Is there -- see, what I'm trying to get a
15 grasp of is what do the local lead agencies do with the
16 money that's provided to them by Prop 99?

17 A. They do a lot of different things.

18 Many different things.

19 Q. Are there similarities between the programs
20 that the local lead agency will provide and what the
21 competitive grantees provide?

22 A. Some are similar and some are different.

23 Q. Do the local lead agencies receive a grant of
24 money which enables them to in turn subcontract to have
25 activities performed, or are the monies used to increase
26 the budget of existing elements of the local lead
27 agency, for instance, the Santa Barbara Department of
28 Health Services, and they undertake those programs?

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1 A. Both, actually. The local lead agencies are
2 allowed to issue their own RFAs or mini grants.

3 You know, whatever is legal for them to do.

4 Q. Now the evaluations that you made reference
5 to with respect to either the local lead agencies or the
6 competitive grantees, whether they're submitted at the
7 end of the contract term or periodically through the
8 contract, do they have any evaluation or indication of
9 the number of persons or percentage of the population
10 within the particular county or area of operation that
11 have been reached by their programs?

12 A. You're going to have to run that question by
13 me again.

14 MR. L'ORANGE: I'm not sure I can. Let me
15 have the court reporter read it back, please.

16 (The record was read by the reporter)

17 MR. L'ORANGE: Q. As an example, a
18 competitive grantee wants to get information out about
19 ETS, and it proposes to get that information out to the
20 Hispanic community in Santa Barbara County.

21 Will its evaluation reports submitted either
22 by way of progress reports or at the end of the contract
23 term contain any information indicating that either for
24 the particular period reported on or at the end of the
25 contract term, the program reached a hundred thousand
26 people or 50,000 people?

27 A. I would say no.

28 Q. Is there any mechanism you're aware of that
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1 measures the effectiveness of the programs, either on a
2 local lead agency basis or competitive grantee basis,
3 essentially based on the number of people reached or the
4 percentage of population thought to be reached?
5 A. No.
6 Q. Now let me take it one step further.
7 Is it a fair statement to say that one
8 measure of the effectiveness of the programs at either
9 level, local lead agency or competitive grantee, would
10 be the CATS survey and the youth survey conducted by the
11 cancer surveillance branch?
12 A. Not necessarily.
13 Q. Why would you say that?
14 A. It depends what you're trying to accomplish
15 with your program.
16 Q. If you're trying to assess --
17 A. You have to ask specific -- I'm sorry.
18 Q. I'm sorry, go ahead. Did I cut you off?
19 A. You need to be a little bit more specific
20 about what program element and what you mean by
21 "effectiveness," for me to respond.
22 Q. If I want to measure the level of awareness
23 of a particular issue, for instance, is the public aware
24 of the hazards posed by ETS, can I use the data
25 generated by the CATS and the youth survey, to the
26 extent it addresses that issue as a measure of how
27 effective my program has been in making the public aware
28 of that issue?

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1 MR. MANSFIELD: I think that goes beyond her
2 expertise. I don't know how she would know that, unless
3 she was some sort of a scientist or...
4 Can you answer that?
5 THE WITNESS: No. It would depend if you're
6 talking statewide or whether you're talking local.
7 Scientific surveys, using a random sample,
8 are very expensive to do. So if Los Angeles County, for
9 example, wanted to know, it would take a great deal of
10 money to do that.
11 MR. L'ORANGE: Q. I guess what I'm trying to
12 figure out is whether there is a mechanism by which data
13 has been gathered that demonstrates how effective the
14 Prop 99 program has been at making people aware of the
15 dangers posed by exposure to environmental tobacco
16 smoke.
17 A. The only...
18 MR. MANSFIELD: Again, we have the problem
19 with "effective." Are you talking about numbers
20 reached? Types of people reached?
21 I think that's a little broad brush.
22 MR. L'ORANGE: No, that's fair.
23 Q. By effectiveness I mean numbers of people
24 responding to a survey or a questionnaire indicating
25 they are aware of the dangers posed by inhalation of
26 ETS.
27 A. Not in that way.
28 Q. What do you mean by that?

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1 A. If you want to know information on a
2 statewide representative basis, you do a random sample
3 statewide. It's not applicable to any other local -- to

4 a local area.

5 Q. Now for instance, do you have any knowledge
6 as to whether the CATS survey, which is the subject of
7 Exhibit 124, was performed on a random basis?

8 A. Correct.

9 Q. I'm sorry, was performed.

10 A. It was performed on a random basis.

11 Q. Now let's look at fast facts for a moment.
12 It's in the top of the column and it says, "90 percent
13 of Californians believe ETS causes cancer."

14 Is that an indication to you that your
15 program, perhaps in conjunction with other factors, has
16 reached at least 90 percent of Californians to apprise
17 them about the dangers of ETS --

18 A. No.

19 Q. -- insofar as cancer is concerned?

20 A. No.

21 Q. Why do you say that?

22 A. It's a random sample that's done to give a
23 statewide -- obtain statewide information. You cannot
24 extrapolate from that and say 90 percent of the
25 population was reached. It's a totally different thing
26 that you're saying. You can say that this particular
27 random sample survey had this particular finding, but
28 you can't extrapolate and say 90 percent of the people.

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1 Q. I think I understand what you're saying now.
2 You're saying that this particular survey
3 constitutes a single data point in time, correct?

4 A. Ask me the question again.

5 Q. Yes, ma'am.

6 Are you telling me that, for instance,
7 Exhibit 124 tells us that at some point in time, based
8 on the results of the random survey, 90 percent of
9 Californians believe ETS causes cancer, but from your
10 standpoint that constitutes only one data point?

11 A. That's one data point.

12 Q. And your concern is that you can't really
13 extrapolate from that data point and make a definitive
14 statement that 90 percent of Californians believe this?

15 A. No, you can't.

16 Q. In other words, is this a projection that
17 this document is referencing?

18 A. This is a response on the part of people who
19 were -- who responded -- who were asked in this survey
20 to respond to this particular question. If you... if
21 you want -- somebody says, "Well, that means 90 percent
22 of people who live in Los Angeles believe that," you
23 cannot say that. I say, based on this particular
24 survey.

25 Q. Can you say, based on this particular survey,
26 90 percent of Californians believe ETS causes cancer?
27 They may not necessarily reside in Los
28 Angeles, but 90 percent of the state's population, at

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1 least based on this random survey, have come to the
2 conclusion addressed in 124?

3 A. I still don't believe you can say it that
4 way.

5 Q. I'm trying to get at what your concern is.
6 Can you tell me why you can't say it that way?

7 A. A random sample -- this is a statewide
8 sample --

9 Q. Right.
10 A. -- okay? Over a particular period of time.
11 California has 35,000,000 people,
12 approximately 35,000,000 people in it. There's no way
13 you can say that 90 percent of 35,000,000 people believe
14 this. It depends on where they live, what their ethnic
15 population is, rural, urban -- whatever.
16 You can only say basically what this says
17 here, and you really can't go beyond that. It's a
18 scientific... It's a science of surveying.
19 MS. MARTIN: May I just follow up with a
20 couple of quick questions on that, if I may?
21 MR. L'ORANGE: Sure.
22 MS. MARTIN: Now you see that on Exhibit 124,
23 in the upper left under "Fast Facts" it says, "90
24 percent of Californians believe ETS causes cancer."
25 THE WITNESS: Yes.
26 MS. MARTIN: It says that, correct?
27 THE WITNESS: Yes.
28 MS. MARTIN: But you are stating a personal
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1 belief that despite this statement, that's not really
2 true, is that your...
3 THE WITNESS: That's not what I'm saying at
4 all.
5 MS. MARTIN: Could you please explain it a
6 bit more.
7 THE WITNESS: I'll say it again. This survey
8 was a random sample of California's population that came
9 up with this particular figure. You cannot take that
10 and turn it around and say 90 percent of 35,000,000
11 people believe that. There's no way to know that.
12 We can only get an indication, through a
13 survey like this, in a random sample survey.
14 MS. MARTIN: So is it your position, then,
15 that this statement is somehow inaccurate or incomplete?
16 THE WITNESS: No, I'm not saying that at all.
17 This statement that says -- that's stated
18 here, you're asking for -- you're asking about the
19 science of surveying, when you're framing your questions
20 the way you are. I'm not a scientist and I've
21 explained, to the best of my ability, what the
22 difference is. It's not a personal belief. It's not...
23 MS. MARTIN: I understand.
24 So you're not a scientist?
25 THE WITNESS: No.
26 MS. MARTIN: And you're not a survey expert?
27 THE WITNESS: No.
28 MS. MARTIN: Thank you.

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1 MR. L'ORANGE: Q. Ms. Russell, are you
2 familiar with something called the SWRL data?
3 A. I've heard of it.
4 Q. Have you ever seen it at all?
5 A. A long time ago I... Yeah. A long time ago.
6 Q. Any understanding as to what it measures?
7 A. Not a clue.
8 Q. Is there something called BRFS data?
9 A. Correct.
10 Q. Now does it address ETS or smoking?
11 A. I'm not sure what the... There was some --
12 there is some questions in the BRFS. They added
13 questions to the BRFS to enhance the CATS survey so that

14 it reached more people. What I'm not sure of is does
15 the BRFs ask questions that CATS doesn't or vice versa.
16 I don't know that. I'd have to see the questions.
17 Q. And they're two separate surveys, would that
18 be fair?
19 A. Yes.
20 Q. Do you know who contacts --
21 A. CATS surveillance.
22 Q. Same folks. So it's an in-house survey?
23 A. Yes.
24 Q. Any idea as to the magnitude of the
25 population surveyed for BRFs?
26 A. I don't recall what the numbers are right
27 now.
28 Q. And is it like the CATS survey, in the sense

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1 that it's done over a year's period of time?
2 A. Correct.
3 Q. And BRFs stands for Behavioral Risk Factor
4 Survey?
5 A. Correct.
6 Q. At the conclusion of a fiscal year does the
7 Tobacco Control Section or the local programs unit
8 prepare any kind of executive summary which would
9 highlight successes that the program has achieved over
10 the previous fiscal year?
11 A. We did. A legislative report was done early
12 in the program, which would have been too soon to have
13 measured anything. There was another report written
14 that was never approved, never went anywhere.
15 The only other reports would be the master
16 plan that the Tobacco Education and Research Oversight
17 Committee publishes.
18 Q. Do you know about what the time period was
19 that the master plan was published?
20 A. There's been one approximately every other
21 year.
22 Q. Now does TCS or components of TCS have input
23 into the master plan that's published by -- it's
24 pronounced "TEROC," isn't it?
25 A. Right.
26 Q. Tobacco Education Research Oversight
27 Committee?
28 A. They write the plan.

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1 Q. I understand that.
2 A. And they might request information from us
3 just like this or whatever, but we don't --
4 Q. When you said "like this," you're referencing
5 Exhibit 124?
6 A. Information. They ask for budget sheets.
7 They basically are an oversight committee.
8 They watch lots of different program elements over time.
9 Q. Now during 1994 through June of 1999 did you
10 ever have occasion to interface with TEROc?
11 A. Yes.
12 Q. What was the nature of your contact with
13 TEROc?
14 A. I attend their meetings and provide technical
15 information when it's requested.
16 Q. What type of technical information would you
17 provide?
18 A. They like to have a program report of some of

19 the activities over a quarter or half a year or whatever
20 it is they request.

21 Q. Now how frequently would you meet with TEROC
22 over the five-year period that we've focused in on?

23 A. Well, TEROC meets anywhere from two to four
24 times a year, unless they hold special meetings, and
25 I've attended most of those -- not all of them, but most
26 of them.

27 Q. And when they ask you for technical
28 information on the activities of TCS, what type of

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1 information do you customarily provide them?

2 A. We let them know, when we've released an RFA,
3 what the response has been, number of contracts
4 negotiated, number of organizations funded. What else?

5 Things like that, pretty much.

6 Q. Do you provide them with any evaluation
7 reports which indicate levels of awareness in the local
8 population with respect to tobacco issues which you
9 attribute to the activities of the local lead agencies
10 or the competitive grantees?

11 A. They receive any reports that have been
12 approved by the department, the same as anyone else in
13 the program has the contract.

14 Q. Back to my original question.

15 At the conclusion of a fiscal year, does TCS
16 prepare any type of executive summary or executive
17 report to submit to the cancer control branch, to the
18 director of health services, outlining what the
19 activities have been over the prior fiscal year;
20 successes, amounts of money spent, number of grantees
21 funded -- items of information like that?

22 A. No.

23 Q. Is there any report submitted on a periodic
24 basis for longer than five years?

25 In other words, you've submitted it over the
26 past five years or the past ten years?

27 A. Not a report, no.

28 Q. Is there something less formal than a report

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1 that's communicated up to the cancer control branch or
2 the director of health services?

3 A. Well, as I explained earlier, sometimes the
4 department requests information from us, in which case
5 we would compile it and send it up the chain.

6 Q. Now is one of TEROC's responsibilities to
7 oversee the activities of the Tobacco Control Section?

8 Am I stating that too strongly when I use the
9 word "oversee"?

10 A. They oversee the program.

11 They are not managing the program, let alone
12 micromanage into what the activities are.

13 Q. Now how would you characterize "oversee," as
14 you're using it in that sentence?

15 A. Oversight means basically -- well, I don't
16 know what it means. It's written in the legislation.
17 You really need to read the legislation. It's spelled
18 out exactly what their responsibilities are.

19 Q. Are there any other oversight committees or
20 groups that play any role in providing guidance or
21 oversight with respect to the activities of the program?

22 A. That provide oversight? No.

23 Q. During the period 1994 to June of 1999, did

24 you ever interface with -- I'll call them, for want of a
25 better term, senior DHS personnel, to advise them of the
26 activities of the Tobacco Control Section?

27 A. Yes.

28 Q. With whom would you have that contact?

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1 A. Well, at that point in time it would have
2 been our division chief and the assistant division
3 chief. Occasionally we were called to brief the
4 director on whatever the issue of the moment was, which
5 varied.

6 Q. Did the director of health services ever ask
7 for the section's evaluation on the percentage of the
8 population reached concerning the three priorities of
9 the program?

10 MR. MANSFIELD: You've got to be more
11 specific as to time, because there was a variety of
12 directors in that time period.

13 MR. L'ORANGE: Fair enough.

14 Q. From '94 to June of '99, who was the director
15 of health services?

16 A. There was Molly Coye, there was Kim Belshe,
17 and Diana Bonta. Three of them.

18 Q. Three in that five-year period?

19 A. Right.

20 Q. Did any of those three ever ask for reports
21 which dealt with whether there had been an increase in
22 awareness of the hazards posed by environmental tobacco
23 smoke?

24 A. No.

25 MR. L'ORANGE: Let me take about three
26 seconds and go off the record.

27 (A discussion was held off the record)

28 MR. L'ORANGE: Q. Has any member of the

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1 legislature, during the five years that we're focusing
2 in on, ever requested of you any report or information
3 which would indicate whether there's been an increase in
4 the level of awareness among the residents of the state
5 of California about hazards posed by environmental
6 tobacco smoke?

7 A. For information on -- I'm sorry, would you
8 say that again?

9 Q. Sure.

10 A. Numbers of people?

11 Q. Has any member of the legislature ever asked
12 you for any information or report which would
13 demonstrate an increased level of awareness about the
14 hazards of environmental tobacco smoke on the part of
15 the residents of the state of California, whether
16 measured by CATS data --

17 A. Not that question.

18 Q. Has that information ever been communicated
19 to the legislature, albeit under -- associated with
20 other information or in another report?

21 A. Not that particular information.

22 Q. Could I ask you what information, with
23 respect to ETS, has been communicated by you or by the
24 section, that you're aware of, to the legislature
25 regarding the environmental tobacco smoke?

26 A. That... there are too many instances for me
27 to really address that. It's very -- much too broad.

28 Q. How has there been any information

1 communicated by you or by the section, that you're aware
 2 of, dealing with levels of awareness of the hazards of
 3 environmental tobacco smoke by the residents of
 4 California? Whether it's been presented singularly or
 5 in combination with other information?

6 A. We've never been asked for that particular
 7 information.

8 Q. To your knowledge, has any information
 9 pertaining to that subject matter ever been compiled by
 10 the section?

11 A. We may get requests for information or for a
 12 briefing. I'm trying to think of an example.

13 I'm thinking of, for example, when AB 13 went
 14 into effect, we were asked to provide information on
 15 numbers of cities that had enacted smoke-free
 16 ordinances. That would be an example.

17 MR. L'ORANGE: Why don't we break now, it's
 18 about ten minutes of 12:00, and go off the record for a
 19 minute.

20 (A discussion was held off the record)

21 (A lunch recess was taken from 11:48 a.m. to 12:36 p.m.)

22 (In the absence of Ms. Martin and Ms. Sheridan)

23 MR. L'ORANGE: Q. Ms. Russell, during the
 24 1994 to 1999 time frame did you ever participate in the
 25 peer review process of the applications submitted by the
 26 competitive grantees?

27 A. Submitted by?

28 Q. The competitive grantees.

1 A. Yes.

2 Q. Do the local lead agencies also go through a
 3 review process?

4 A. Correct.

5 Q. Now is the purpose of the review process to
 6 ensure that the best possible program gets funded?

7 Is that kind of the end result of it?

8 A. Yes.

9 Q. That's true for the local lead agencies as
 10 well?

11 A. No.

12 Q. What's the purpose of the review process for
 13 the local lead agencies?

14 A. They already are guaranteed they're going to
 15 get funded.

16 Q. The local lead agency programs are not peer
 17 reviewed, it's just the competitive grantees, right?

18 A. Their comprehensive plans are peer reviewed,
 19 but not for funding.

20 Q. Is the peer review process tied to particular
 21 fiscal years?

22 A. Yes.

23 Q. And does the peer review process occur before
 24 or after the section's budget has been created by the
 25 governor's office and approved by the legislature?

26 A. Well, the governor comes out with a new
 27 budget every year, and contracts are for more than one
 28 year, so they're not -- so the answer to your question

1 would have to be no.

2 Q. But as I understood your earlier testimony,
 3 while a contract may be let to a grantee, the grantee is
 4 placed on notice that it is subject to funding approval

5 by the legislature?
6 A. Availability of funding.
7 Q. Is there a group within the Tobacco Control
8 Section that essentially sits down at some point in the
9 fiscal year and tries to determine what level of funds
10 the section wants to expend in the following fiscal
11 year?
12 A. Yes.
13 Q. Who comprises that group?
14 A. It would be people in the technical services
15 part of the section.
16 Q. Have you participated in those discussions?
17 A. Yes.
18 Q. What are the factors that this group
19 considers when it tries to estimate what the... the
20 section's budget will be for a new fiscal year?
21 A. Dollars.
22 Q. How does the group arrive at what it believes
23 to be, if you will, a reasonable budget for the new
24 fiscal year? What's the process?
25 A. Well, we have an accounting section where
26 the -- you know, it's basic accounting, money in, money
27 expended, money left over, carried over from year to
28 year, if we have multiple years' expenditures already.

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1 Q. Now I realize the availability of money is a
2 factor. Are there other factors that you consider when
3 arriving at your budget for a new fiscal year?
4 A. No. Our budget is our budget.
5 Q. I'm sorry. And I don't mean to confuse the
6 use of the word. I guess what I'm driving at is you're
7 midway through a fiscal year, you have a new fiscal year
8 on the horizon, you're not sure what the governor's
9 office is going to come up with, nor what is going to be
10 approved by the legislature.
11 Does the group that you've described for me
12 sit down and say basically, this is what we think we're
13 going to have on a carry-forward basis?
14 A. Yes.
15 Q. In kind of an ideal world, this is what we
16 think we want to spend?
17 A. Yes.
18 Q. And that is put together by the technical
19 services people?
20 A. Correct.
21 Q. But you've had a role in being involved in
22 that?
23 A. Yes. I need to know how much money we have.
24 Q. Now one of the factors that these technical
25 services people consider is the availability of money
26 that you've described, right?
27 A. Yes.
28 Q. Now are there other factors that enter into

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1 that group's analysis? Now let's separate out the money
2 for a moment. Emphasizing a particular message,
3 increasing the number of grantees -- and I'm just kind
4 of hypothetically speaking here. Are there other
5 factors that enter into that analysis?
6 A. We always try to keep money out in the
7 street, and program momentum going. There would be no
8 reason to hold money back and just not do anything.
9 Q. Would it be fair for me to say, then, one of

10 the factors besides the availability of money is the
11 ability to keep the current grantees in that fiscal
12 year, to the extent that their contracts extend to the
13 new fiscal year, operating on the street?
14 A. Yes, yes.
15 Q. I assume that another factor would be the
16 ability to fund new contractors and new programs?
17 A. Correct.
18 Q. Once the technical services people have
19 reached a conclusion about what, in an ideal world, they
20 would like to spend, what's the next step that's taken
21 with respect to those figures?
22 A. It depends what line item is done, whether
23 it's money for media, whether it's a media campaign,
24 whether it's money for competitive grants or local lead
25 agencies.
26 Q. What happens with the monies that are
27 directed to the media campaign?
28 A. I can't respond.

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1 That's outside of my expertise.
2 Q. Let's assume for a minute it's monies to go
3 to local lead agencies and grantees.
4 What's the next step with those figures?
5 A. Well, we would continue to fund contracts
6 that are in place, that need that money to continue to
7 the termination of the contract. Same with local lead
8 agencies. The money fluctuates from year to year.
9 We try to keep them in business. If there's
10 money left over from that, then yes, if it were
11 appropriate at that time, depending upon, again, the
12 line item, we would -- if it were for competitive
13 grants, we would issue another RFP to expend that money.
14 Q. Now once the technical services people have
15 reached a conclusion about what, in a perfect world,
16 they'd like to see as the section's budget, is that
17 information communicated to the governor's office in
18 some way for the governor's office to consider in coming
19 back to actually assigning monies in the budget to the
20 section? What I'm trying to get a grasp of is what's
21 the procedure, from the time that the technical services
22 people have arrived at what they think, in an ideal
23 world, would be the section's budget, what happens to
24 that information, such that it ultimately winds up being
25 money allocated to the section?
26 A. Well, first of all, the amount of money
27 that's supposed to go into the health education
28 accounts, which means the Department of Health Services,

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1 is 20 percent of the tax revenues.
2 Very seldom have we received that, if at all.
3 After that there are -- basically the
4 Department of Finance tells us, based on their
5 calculations of the revenue available from the taxes,
6 what we have to spend, and they more or less tell us.
7 If we need more... more positions or more funds for
8 something, that can be communicated via different
9 department processes, like a budget change proposal,
10 finance letter, Section 28. There's different ways of
11 doing that. And it may or may not be done, depending
12 upon, you know, what the situation is that year.
13 Q. From an availability of money standpoint?
14 A. Yeah, yeah.

15 Q. All right.
16 A. We don't have a lot of control over the money
17 that is allocated to us for this program.
18 Q. Now when you were the chief of local programs
19 and then later the chief of program services, at the
20 beginning of a new fiscal year is there a meeting among
21 the health education consultants with an eye towards
22 determining what are the messages that we want to see
23 communicated during this particular fiscal year?
24 A. We don't do that by fiscal year necessarily.
25 Q. Do you do it by term of contract?
26 A. No. There's... I don't think there's any
27 set, you know, specified time that we would do that.
28 One of the things that we usually do is, like

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1 you indicated, when we know what the budget is going to
2 be, we take a look and see what we have to do. The
3 staff may get together and look at, like we indicated,
4 the CATS information, feedback from the local programs,
5 and determine basically what directions we go. Also the
6 scientific literature, what the science is.

7 Q. Now can we put what you've just said in terms
8 of ETS? Have there been meetings that you attended in
9 the last five years where you sat down at the beginning
10 of a new fiscal year and said, we want to accomplish
11 certain things in the ETS arena?

12 And I'm thinking perhaps of implementation of
13 the smoke-free bars law in 1998.

14 A. Well, that would be one. The same as
15 smoke-free work sites. The two things I've mentioned
16 before. Make sure there's understanding and compliance.

17 Q. Have there been, to your knowledge, any
18 meetings in the last five years where the section wanted
19 to address the issue of ETS in the home and in the
20 automobile?

21 A. I wouldn't say exactly in those terms.
22 We're concerned about people being exposed to
23 ETS, wherever it might be.

24 Q. Is there some procedure which is implemented
25 by the section, once the health education consultants
26 reach a decision at the outset of a fiscal year about
27 the direction or messages that they would like to see
28 communicated, whereby that information is then

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1 communicated down to the local lead agencies and the
2 competitive grantees?

3 A. Most of that kind of information is really
4 transmitted through the local lead agency guidelines and
5 competitive grant RFAs -- RFPs.

6 Q. Now let me make sure what you're telling me.
7 With respect to the local lead agencies, the guidelines
8 basically set forth what the message should be?

9 A. What the message?
10 What do you mean by "message"?

11 Q. That's probably not a good word.
12 What I'm thinking is the local lead agency
13 may have indicated that amongst its programs are several
14 that deal with environmental tobacco smoke, and at the
15 outset of the fiscal year the section concludes, we want
16 to raise the public awareness about ETS -- and I'm
17 speaking in hypotheticals now.

18 Were that the case, how would that
19 information be communicated to the local lead agency to

20 implement in programs it oversaw?
21 Or do I not understand the process?
22 A. Correct.
23 Q. Is what I've just described for you something
24 that occurs?
25 A. Not in that way.
26 Q. Would it be a fair statement to say that the
27 guidelines that are provided to the local lead agencies
28 address the three priorities, one of which is ETS, and

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1 the local lead agencies utilize their initiative in
2 determining how they're going to address that issue?
3 A. Correct.
4 Q. Are the guidelines revised at all on a yearly
5 basis?
6 A. No. No, not the guidelines. Their
7 comprehensive plans can be revised at any time.
8 Q. A comprehensive plan is something submitted
9 by a local lead agency?
10 A. The local lead agencies, and how they're
11 going to implement tobacco control interventions in
12 their jurisdiction.
13 Q. And is there a particular term of the
14 comprehensive plan?
15 A. Just that. Oh, you mean term as a time term?
16 Q. Yes, ma'am.
17 A. That varies. I'm not sure what the current
18 one is. It used to be like two years, and then I think
19 we expanded it to three years. I'm not sure what it is
20 at this point in time.
21 (Ms. Sheridan and Ms. Martin returned to the deposition)
22 MR. L'ORANGE: Q. Does that mean that on a
23 two or three-year basis every local lead agency in the
24 state of California submits to your section a
25 comprehensive plan?
26 A. Correct.
27 Q. And that comprehensive plan sets out how
28 they're going to deal with intervention and prevention?

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1 A. Correct.
2 Q. Now the guidelines that you've referenced,
3 these were the guidelines promulgated early on in the
4 program?
5 A. No, they're changed.
6 The program changes as the years. I mean,
7 you don't keep doing the same thing, necessarily.
8 Q. Can you give me an idea of how the guidelines
9 would address what the local lead agencies are to
10 accomplish? Is there an example that comes to mind?
11 And perhaps we could address ETS as the example.
12 A. We leave that pretty much up to the local
13 lead agencies. They know what the priority areas are,
14 and they come up with their own objectives and what
15 they're going to accomplish and if it's... if it looks
16 like something that is viable, that makes sense, that
17 will work, then yeah, it's approved.
18 Q. What are the types of changes that might
19 occur at the section level that would lead to revisions
20 in the guidelines?
21 A. A big budget cut would be one example.
22 Q. How about a budget increase?
23 A. That could do it as well.
24 They'd have to augment.

25 Q. What other examples could you...
26 A. Well, there may -- you know, you're dealing
27 with local jurisdictions, local counties, cities.
28 They're almost like their own individual
80
1 states, and things change within that community.
2 Q. An example of which would be what?
3 A. I'm sorry?
4 Q. An example of what type of change could occur
5 within a community that might lead to a revision of the
6 guidelines for that local lead agency.
7 A. Well, for example, they might have an
8 objective where they think it's going to take a long
9 time to get rid of billboards in their county or put
10 billboards up, and the situation may change where that's
11 unnecessary. And why keep doing something that doesn't
12 work, or something that's not needed?
13 Q. Now are there basic topics that are covered
14 in the guidelines with respect to the local lead
15 agencies?
16 A. Just the priority areas and other -- anything
17 else that they want to add to their plan that makes
18 sense.
19 Q. Well, the guidelines themselves, though, are
20 there basic core subjects that are contained within
21 those guidelines?
22 A. The three priority areas.
23 And then there's the instructions, you know,
24 on how to perform that and all that.
25 Q. Do the guidelines look somewhat like the RFPs
26 that are let by the section?
27 A. Somewhat.
28 Q. Are the guidelines designed to apply to all
81
1 of the local lead agencies, all of the counties of
2 California, or are they county specific?
3 A. They apply to all the counties, but they're
4 also general enough that there's lots of freedom for
5 them to create their own program.
6 Q. Would it be fair to say that it's a generic
7 set of guidelines that offers flexibility to the
8 individual counties?
9 A. Correct.
10 Q. Does anybody within the cancer control branch
11 calculate the total number of events or media messages
12 that are sponsored by Prop 99 that are aired or take
13 place in the course of a year?
14 A. No.
15 Q. Is there any attempt to estimate the number
16 of events or media ads that are funded by Prop 99 that
17 occur across the state in the course of a year?
18 A. I believe the local lead agencies might
19 report on that, but I'm really not sure. Again, I don't
20 take -- I don't handle the media stuff.
21 Q. Has there been -- strike that. With respect
22 to the local lead agencies, is it your understanding
23 that in the contexts of their progress reports they may
24 report the number of events or media campaigns that have
25 occurred within their jurisdiction?
26 A. They might.
27 Q. Is that a core component of the progress
28 report? Are they required to report the number of
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1 events that have occurred over a six-month period?
2 A. I'd have to... I'm not... I'd have to look
3 at the latest guidelines to know what's in the progress
4 report. I wasn't part of that -- the section at that
5 time. So it could have changed.
6 Q. During the time that you were part of the
7 section, was there a requirement to report the number of
8 events that have occurred over the previous six months
9 in a progress report, whether you're a local lead agency
10 or a competitive grantee?
11 A. You know, I'm not...
12 Reporting the number of events, I'm not sure.
13 Q. Does the section submit any type of summary
14 report to the cancer control branch, right up to the
15 director of DHS, conceivably even the governor's office,
16 that tallies the total number of events, media messages,
17 media ads?
18 A. No.
19 Q. To your knowledge, has the section ever
20 attempted to take all the progress reports received from
21 the local lead agencies and the competitive grantees
22 over a particular period of time, whether it's the
23 previous six months covered by the report, a fiscal
24 year, and tried to determine the number of people
25 reached, as reported cumulatively by all the reports?
26 A. No.
27 Q. Are you aware of any studies conducted by
28 anybody, outside of what we've talked about already this

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1 morning, where there's been an attempt to determine the
2 number of people in California reached by messages or
3 programs funded through Prop 99?
4 A. Not that I recall.
5 Q. When you were the chief of program services
6 or the chief of local programs, was there any attempt on
7 your part to work with the media people such that
8 messages being delivered on media were also being
9 delivered at the same time by the competitive grantees
10 and by the local lead agencies?
11 A. Yes.
12 Q. Tell me about that. How did that work?
13 A. We just communicated to the media what some
14 of the program needs were.
15 Q. The program needs would be driven by the
16 applications of the competitive grantees?
17 A. The program needs would be driven by the
18 applications?
19 Q. When you said that you would communicate to
20 the media what some of the program needs were, now I
21 infer from that that then the media would, in turn, then
22 respond with messages that were responsive to those
23 needs?
24 A. Well, if a community, for example, was
25 undertaking, say, a... a drive to make tobacco less
26 available to kids, it would be helpful if media would
27 place ads to help that area in that endeavor, whatever
28 it is, or to...

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1 Q. From '94 to '99 when you reviewed competitive
2 grantees' applications or local lead agency
3 applications, were there times when one of the
4 priorities was being emphasized more than others, just
5 given the volume of applications that were submitted?

6 A. Yes.
7 Q. In response to those applications, were there
8 years that you would take more applications, for
9 instance, from grantees who were highlighting ETS, as
10 opposed to perhaps other years where you would take more
11 applications from grantees highlighting countering
12 pro-tobacco influences?
13 A. No, no.
14 Q. Have there been any studies or reports, to
15 your knowledge, which have been created to determine the
16 reach of the message set forth by the media, funded by
17 Prop 99?
18 A. I couldn't speak to what media has attempted
19 to count.
20 Q. Same question with respect to the programs
21 overseen by you and your folks from 1994 to 1999, any
22 reports, any analysis, designed to determine the reach
23 of the message, as set out by those programs?
24 A. No.
25 Q. How about if I change the term to any attempt
26 to determine the coverage of the message by the
27 programs?
28 A. I don't know how you would do that.

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1 Q. Are you aware of any attempt to do so, at
2 least from '94 to '99?
3 A. Well, if you're talking about -- you know,
4 there are media markets that "cover," quotation marks, a
5 certain area. That would be as close as you could get
6 to that, but that isn't the kind of thing we ordinarily
7 would count.
8 Q. Is that something, to your knowledge, that
9 Ms. Stevens would do in her unit?
10 A. I'm not sure anyone can deal with that
11 particular one. She could try.
12 Q. Now based on your involvement with the
13 section from 1990 to June of 1999, did the section
14 conclude there were populations or segments of
15 populations in California that were not reached or not
16 reached well by the Prop 99 activities?
17 A. In a state the size of California, with our
18 large ethnic populations, I would say that is true.
19 Q. Were there ever discussions about what
20 populations or segments of populations may not have been
21 reached as well as you might hope under Prop 99?
22 A. Probably all populations.
23 Certainly ethnic communities as well.
24 MR. L'ORANGE: Can we take about five minutes
25 and let me just confer with folks for a second here.
26 (A recess was taken from 1:07 to 1:18 p.m.)
27 MR. L'ORANGE: Q. I had asked you really two
28 questions, and I didn't mean to do that, and let me

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1 break it down. My first question is have you been
2 involved in discussions with anyone in the section
3 wherein the topic was populations who have not been
4 reached at all by Prop 99 programs or media messages?
5 MR. MANSFIELD: What do you mean by
6 "involved"? Was she present? Did she participate?
7 MR. L'ORANGE: Where she participated in any
8 discussions where that topic has been raised.
9 THE WITNESS: There's no way for us to know
10 that all populations have been -- no, not that.

11 MR. L'ORANGE: Q. We're looking at it from
12 two different ends. What I'm asking you is have there
13 ever been discussions in which you have participated,
14 where members of the section or yourself expressed the
15 position that a particular population within the state
16 of California had not been reached by Prop 99 programs
17 or media messages funded by Prop 99.

18 A. We never had a discussion on that particular
19 question.

20 Q. Now my second question that was subsumed was
21 have there ever been discussions with members of the
22 section, during the time you've been with it, that there
23 are populations within the state of California who have
24 not been reached very well by program activities or by
25 media messages funded by Prop 99?

26 A. What -- yes, yes.

27 Q. Was there ever a determination as to the
28 populations that the participants believed have not been
87

1 reached well?

2 A. That what?

3 Q. That the participants in the conversation
4 believed had not been reached well by either the
5 messages funded through the media or the program
6 activities.

7 A. Let me see if I understand. You're asking if
8 any participants in the discussion believed any of the
9 populations had not been reached well?

10 Q. Yes, ma'am.

11 A. I don't really recall a specific occasion
12 when that was asked on a specific occasion.

13 Q. Are you familiar with something that's called
14 pink, blue, and green sheets?

15 A. Yeah.

16 Q. We had some testimony about those yesterday.
17 Can you... Can you tell us the information
18 that's contained on the pink, blue, and green sheets?

19 A. The name of the agency that's funded.

20 Q. If we wanted to figure out every contract
21 that's been let by the section over the ten-year period
22 of the program, would a review of the pink, green, and
23 blue sheets enable us to do that?

24 A. No.

25 Q. What would be missing from the analysis?

26 A. Those are -- well, those are updated
27 periodically, because sometimes names of organizations
28 change, names of contacts change.

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1 Q. So when we reviewed, there might be some
2 inaccuracy because they hadn't been updated for the
3 latest period of time?

4 A. I'm not sure what your question is.

5 We haven't funded the same agencies for the
6 past nine years.

7 Q. I understand. What I'm trying to find out is
8 if we wanted to make a determination or get the identity
9 of the agencies, the local lead agencies, the grantees
10 who have been funded over the ten-year duration of the
11 program, would a review of the pink, blue, and green
12 sheets enable us to do that?

13 A. No, no.

14 Q. And why would we not be able to get that
15 information reviewing the pink, green, and blue sheets?

16 A. Because those are just current rosters.
17 Q. So they go for the contracts that are
18 currently --
19 A. Yeah, they're at this point in time and
20 they're updated periodically when there's changes.
21 Q. Is there any summary sheet that you're aware
22 of that has the identity of all of the contractors that
23 have been funded through Prop 99?
24 A. No. No.
25 Q. Let me show you an exhibit that was
26 introduced. Are you familiar with the directories that
27 are put out each year?
28 A. Yes, yes.

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1 Q. Do the directories -- strike that.
2 Are you familiar with the list of contractors
3 and agencies in the back of each of the directories?
4 A. In the directories, right.
5 Q. Now is that an accurate representation of the
6 agencies and the contractors being funded at the time of
7 the publication of that directory?
8 A. Correct.
9 Q. So if I wanted to determine the names of the
10 agencies and the contractors that had been funded over
11 the ten-year period of the program, I just need the
12 directories published for the ten years?
13 A. You need all of the directories, yeah.
14 Q. Now let me show you an exhibit that was
15 introduced in Ms. Roeseler's deposition. It's been
16 marked as Exhibit 123. I'm going to put a full copy of
17 it in front of you as well. Now if you'll note, up in
18 the left-hand corner of Exhibit 123 there is a title
19 just below the California Tobacco Education Project
20 Directory - Search Results.
21 A. Right.
22 Q. It says "TCS-Funded Projects - ETS Priority
23 Area." Do you see that?
24 A. Right.
25 Q. Is there any way whether you can tell me, the
26 agencies or contractors that are listed in this
27 document, are these all of the contractors and agencies
28 that have been funded over the duration of the program

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1 or a portion of the program or can you tell? Our
2 problem is there are no years specified in the report.
3 A. Well, I couldn't tell by looking at this, no.
4 Q. Do you have any personal understanding as to
5 how the California Tobacco Education Project Directory
6 database is maintained?
7 A. No, I don't.
8 I didn't involve myself in that.
9 Q. Is that something maintained by the section,
10 or does another organization maintain it?
11 A. It's maintained by the clearinghouse.
12 Q. Tobacco Education Clearinghouse of
13 California?
14 A. Correct.
15 Q. Do you know whether the Tobacco Education
16 Clearinghouse has the capacity to search its database to
17 provide us the names of all of the ETS contractors for
18 the duration of the program?
19 In other words, the last ten years?
20 A. I don't know.

21 Q. Do you have any familiarity at all with an
22 organization called Telemark that provides region
23 frequency data for the telemarketers?

24 A. No.

25 Q. Have you dealt at any time with Western
26 Initiative Media or Western Media Initiative?

27 A. I haven't.

28 Q. Do you have any understanding of any role

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1 they played in the media campaign?

2 A. No, no.

3 Q. Did you get involved in the public relations
4 campaign in any way from the time you joined the section
5 until June of 1999?

6 A. How do you mean "get involved"?

7 Q. Did you provide any guidance to them,
8 participate in any discussions with them leading to the
9 creation of a public relations ad or campaign --
10 anything of a nature like that?

11 A. Their assistance would sometimes be requested
12 to help a local program with a press conference or...
13 they helped design the brochure on Assembly Bill 13.

14 Q. Is it your understanding that Rogers &
15 Associates has at least one and sometimes two people
16 working within the Tobacco Control Section that are
17 Rogers employees?

18 A. I don't know how many there are.

19 There's usually one.

20 I don't know how many there are at this time.

21 Q. Do you have any personal knowledge as to why
22 Rogers maintains an employee as part of the Tobacco
23 Control Section?

24 A. I expect they were requested to because we
25 need staff help.

26 Q. You say you expect they were requested.

27 Do you have any personal knowledge?

28 A. That's not my area, that's not my

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1 jurisdiction. Media campaign is not.

2 Q. Do you have any knowledge at all as to
3 whether Asher & Partners, the media contractor, was ever
4 requested to provide an employee to the Tobacco Control
5 Section?

6 A. I don't know.

7 Q. Do you have any understanding as to the types
8 of activities that Rogers performs for the section?

9 A. I just explained it.

10 Q. Do they do press releases or does the section
11 draft their own press releases?

12 A. The department does their own press releases.

13 From a local programs perspective, they will
14 help the local programs draft press releases or to hold
15 press conferences or to help them with an event.

16 Q. A press release or press conference which
17 involves Tobacco Control Section personnel, is the
18 release drafted by someone within DHS?

19 A. If it's outside of the -- if it's not a
20 DHS-sponsored press conference, it's drafted by Rogers,
21 or Rogers may even draft it for use by the department,
22 but it could go either way.

23 Q. And if it is a DHS event, there is some
24 possibility somebody within the department may draft it?

25 A. Oh, very -- yeah, very strict guidelines,

26 policies within the department handled by the media.
27 Q. Has the Tobacco Control Section retained all
28 of the press releases that it's issued over --

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1 A. No idea.
2 Q. Do you know whether there's a file anywhere?
3 A. I really don't know.
4 MR. MANSFIELD: Let him finish.
5 Let him finish.
6 MR. L'ORANGE: Q. During the time that you
7 worked at the section, from 1990 to June of 1999, did
8 you become aware of other sources of information within
9 the state of California regarding ETS?
10 MR. MANSFIELD: Other than what?
11 MR. L'ORANGE: Other than the Prop 99
12 program.
13 THE WITNESS: The Air Resources Board was
14 doing some studies.
15 MR. L'ORANGE: Q. Have you ever reviewed any
16 materials put out by hospital networks or HMOs which
17 deal with the hazards of ETS?
18 A. No.
19 Q. Are you aware that any such materials were
20 put out?
21 A. No.
22 Q. Have you had any contact with Proposition 10
23 people?
24 A. No.
25 Q. None at all?
26 A. None.
27 Q. Do you have any understanding as to whether
28 Proposition 10 will be addressing ETS issues in its ads

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1 or in its programs?
2 A. I think I saw an ad on television.
3 Q. Sponsored by Prop 10?
4 A. Yeah.
5 Q. On ETS?
6 A. I believe.
7 Q. Any knowledge or information, beyond seeing
8 the ad?
9 A. No, no.
10 Q. Do you have any understanding or personal
11 knowledge as to whether the MSA organization, the
12 American Legacy Foundation, plans any type of ETS
13 informational campaign or media ads?
14 A. In the country?
15 Q. Yes. Well, in California.
16 A. No.
17 Q. Has there been any discussion, during the
18 time that you were with the section, that the Tobacco
19 Control Section might apply for MSA monies to augment
20 its state budget?
21 A. I've heard that it might apply.
22 Q. From whom have you heard that?
23 A. I probably asked somebody.
24 Q. Was there ever any discussion, that you know
25 of, wherein an amount of money was considered?
26 A. The amount of money is unclear that
27 California would be entitled to.
28 Q. Do you have any understanding as to whether

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1 California would have to submit essentially a response

2 to an RFP, not unlike a competitive grantee submits
3 under the Prop 99 program?
4 A. As I understand the American Legacy
5 Foundation, that would be true.
6 Q. Do you have any understanding as to whether
7 there is work under way currently within the section to
8 submit a response to an RFP?
9 A. I'm not aware of any.
10 I'm too distant from that.
11 Q. Do you have any understanding as to who
12 within the section is involved in the process of
13 inquiring with the MSA on the preparation of a response
14 to an RFP?
15 A. I don't know.
16 Q. Do you have any understanding as to whether
17 the recent allocation of monies through the MSA in
18 roughly December of last year has affected any of the
19 programs administered by Prop 99?
20 A. Not that I'm aware of.
21 Q. I'm sorry, I'll rephrase the question.
22 The monies that were made available through
23 the MSA last year, have any of those monies been made
24 available to the Tobacco Control Section?
25 A. No.
26 Q. Do you have any understanding as to whether
27 any amount will be made available to you?
28 A. No, I have no knowledge about that

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1 whatsoever.
2 Q. Are there any private foundations that you
3 are aware of that have promulgated within the general
4 public a message concerning the hazards of ETS?
5 A. I'm sorry, would you say that again?
6 Q. Sure. Are you aware of any private
7 foundations which have been promulgating ETS messages to
8 the general public regarding the hazards of exposure to
9 ETS?
10 A. No.
11 Q. Do you have any information about an
12 organization known as the Robert Wood Johnson
13 Foundation?
14 A. Yes.
15 Q. Do you have any information as to whether
16 that foundation is sponsoring messages concerning the
17 hazards of ETS which are promulgated to the general
18 public?
19 A. I don't know of any ETS messages that they
20 put forward.
21 Q. Do you have any knowledge about ETS messages
22 or the hazards of exposure to ETS that have been
23 promulgated by American Heart, American Lung, or
24 American Cancer?
25 A. Yes.
26 Q. What's your knowledge on that?
27 A. The American Lung Association did an ad on
28 smoke-free bars, and I can't recall specific things or

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1 messages that they've done at this time.
2 Q. Now that was American Lung.
3 Do you have any knowledge about American
4 Heart or American Cancer providing ETS messages to the
5 general public, either through brochures or ads?
6 A. Yeah. I don't know of any messages that

7 American Heart or American Cancer Society have put out,
8 any specific messages or events.
9 Q. Does the Tobacco Control Section maintain a
10 Web site?
11 A. The Department of Health Services has a Web
12 site which the Tobacco Control Section is a part of.
13 Q. Have you ever looked at that Web site?
14 A. I looked at the... What do you call that?
15 The site, period.
16 Q. The home page.
17 A. Yeah, the home page, thank you.
18 Q. Besides the home page, have you ever looked
19 at the portion of the site dedicated to the Tobacco
20 Control Section?
21 A. No.
22 Q. Do you have any knowledge as to whether TCS'
23 portion of the Web site has any ETS messages on it at
24 all?
25 A. No, I have not looked at it.
26 I know the RFPs are there.
27 Q. RFPs are out for someone to create ETS
28 messages for the TCS Web site?

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1 A. No, not that I'm aware of.
2 Q. I thought you said the RFPs were out there.
3 A. On the TCS Web site.
4 Q. So the RFPs are listed on the TCS Web site?
5 A. Yes.
6 Q. Does the Department of Health Services Web
7 site, to your knowledge, contain any information about
8 ETS?
9 A. Not that I know of.
10 Q. Are you aware of Web sites of any other
11 organization that have ETS messages included in the
12 information presented within the Web site?
13 A. Not that I've seen.
14 Q. Do you have any personal knowledge about how
15 the Department of Education is administering its
16 anti-tobacco program?
17 A. Only that they have just changed it.
18 They do grants on a competitive basis,
19 particularly for high schools. I believe that they're
20 looking to expand that to -- I'm not sure of the
21 grades -- six to 12, something like that.
22 Q. Do you know if ETS messages are included?
23 A. I haven't seen any of their actual materials
24 that they use in the schools.
25 Q. Do you have any understanding as to whether
26 textbooks now contain chapters which concern tobacco
27 related --
28 A. I don't know of any. I haven't seen any.

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1 Q. Does the section consider news broadcasts
2 that might concern the passage of AB 13, the creation of
3 smoke-free bars, as an avenue whereby the public can at
4 least get some additional information concerning ETS?
5 A. That they can get additional information from
6 where, again?
7 Q. News broadcasts that concern events like the
8 passage of AB 13, the creation of smoke-free bars.
9 A. We usually let that be known through the
10 local lead agencies, to get the message locally.
11 Q. Now I appreciate that's what the program

12 does. I guess what I'm asking you is do members of the
13 program consider that a potential source of information
14 about ETS could be through news programming throughout
15 the state of California when it addresses ETS related
16 issues? For instance, creation of smoke-free bars, the
17 passage of AB 13.

18 A. True.

19 Q. Prior to your deposition today were you
20 contacted by any attorneys claiming that they
21 represented a Mr. Paul Dowhall or the American
22 Environmental Safety Institute?

23 MS. MARTIN: "Dowhall."

24 MR. L'ORANGE: Dowhall, sorry.

25 THE WITNESS: No.

26 MR. L'ORANGE: Q. Have you had any
27 discussions with a Mr. Brian Brookey, a Mr. Roger
28 Carrick, a Mr. Mark Todzo, that you can recall?

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1 A. Never heard of them.

2 Q. Have you ever heard of the American
3 Environmental Safety Institute?

4 A. No, I actually haven't.

5 Q. Do you know whether it has any reputation in
6 the health care community of any sort?

7 A. Don't have a clue.

8 Q. Have you ever heard of or been contacted by a
9 Ms. Deborah Sivas?

10 A. No.

11 Q. Do you know if she has any reputation at all
12 within the health care community?

13 A. Don't know.

14 Q. How about Mr. Dowhall?

15 A. Don't know.

16 EXAMINATION BY MS. MARTIN

17 MS. MARTIN: Q. Regarding Rogers &
18 Associates, you mentioned that they provided some
19 assistance to the local lead agencies --

20 A. Correct.

21 Q. -- including press releases.

22 A. They would help the local lead agency or
23 local program. What they might do is that they might
24 help a local lead agency, for example, do -- they might
25 do a Swiss cheese release for them.

26 Q. Could you describe a Swiss cheese release?

27 A. Yeah, it's where you leave blanks, like the
28 name of the agency or who they contact or who is the

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1 spokes -- they usually quote somebody in a news release,
2 and they don't know who would be quoted, so...

3 Q. Did you talk directly with anyone at Rogers &
4 Associates?

5 MR. MANSFIELD: During what time?

6 THE WITNESS: About what?

7 MS. MARTIN: Q. Ever.

8 A. Sure.

9 Q. Were you the main contact for Rogers &
10 Associates?

11 A. No.

12 Q. Who was?

13 A. That would be Colleen Stevens or Robin
14 Shimizu.

15 Q. How many times did you talk directly with
16 anyone at Rogers & Associates?

17 A. I have no idea.
18 Q. Can you estimate?
19 A. No, no way I could estimate over nine years.
20 And they weren't our PR firm for all that time either.
21 Q. Can you tell me the dates for which they were
22 your PR firm?
23 A. I don't remember the year that they started.
24 They were a subcontract with Asher Partners
25 and another name then, and so I... it's hard to track,
26 and now they have their own separate contract. They're
27 not a subcontract of Asher & Partners.
28 Q. Can you tell me who you spoke with at Rogers

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1 & Associates when you spoke with them?
2 A. Well, it was usually in a group. Lynn Dahl,
3 Matthew LeBeck. That's about it.
4 Q. Can you tell me what Matthew LeBeck, what his
5 position was?
6 A. No, I don't know what their positions are.
7 Q. Are you aware of Rogers & Associates
8 providing any clipping services?
9 A. I believe they did at one time.
10 I'm not real super knowledgeable about that.
11 Q. Who would be?
12 A. Colleen Stevens.
13 MS. MARTIN: Thank you.
14 That's all I have right now.
15 MR. L'ORANGE: Thank you, Ms. Russell.
16 I appreciate your patience.
17 If I may do one last thing. I'd like to
18 attach as the exhibit next in order, the second amended
19 notice of taking the deposition of Carol M. Russell and
20 accompanying request for production of documents, if
21 you'd mark that next in order, please.

(Defendants' Exhibit 130 was
marked for identification)

(Whereupon, the deposition was adjourned at 1:46 p.m.)

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1 I declare under penalty of perjury that the
2 foregoing is true and correct. Subscribed at
3 _____, California, this _____ day of
4 _____, 2000.
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CAROL M. RUSSELL

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1 CERTIFICATE OF REPORTER

2 I, TERRI NESTORE, a Certified Shorthand
3 Reporter, hereby certify that the witness in the
4 foregoing deposition was by me duly sworn to tell the
5 truth, the whole truth and nothing but the truth in the
6 within-entitled cause;

7 That said deposition was taken down in
8 shorthand by me, a disinterested person, at the time and
9 place therein stated, and that the testimony of the said
10 witness was thereafter reduced to typewriting, by
11 computer, under my direction and supervision;

12 I further certify that I am not of counsel or
13 attorney for either or any of the parties to the said
14 deposition, nor in any way interested in the event of
15 this cause, and that I am not related to any of the
16 parties thereto.

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18 DATED: April 3, 2000
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TERRI NESTORE, CSR 5614

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